

MONTANA LEGISLATIVE HISTORY

Chapter 546 19 97

Bill H 604 S ~~700~~ Original bill & history X c

H. Committee on BUSINESS & LABOR

Hearing Date(s) 4/2 x c
 by EXEC ACTION

_____ c

_____ c

_____ c

Date Out _____ c

S. Committee on BUSINESS & INDUSTRY

Hearing Date(s) 4/10 x c
 by EXEC ACTION

_____ c

_____ c

_____ c

Did this bill originate in an interim committee? ____ Yes X No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

3/28 MISSED DEADLINE FOR 67TH DAY TRANSMITTAL
DIED IN COMMITTEE

HB 603 INTRODUCED BY JORE LC1377 DRAFTER: HEIMAN

SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AMENDMENTS TO
THE MONTANA CONSTITUTION TO PROHIBIT PROPERTY TAXES
UNLESS REQUIRED FOR PAYMENT OF EXISTING BONDED
INDEBTEDNESS

3/10 INTRODUCED
3/10 FIRST READING
3/10 REFERRED TO TAXATION
3/14 HEARING
3/24 TABLED IN COMMITTEE
4/05 MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
DIED IN COMMITTEE

HB 604 INTRODUCED BY HARPER, ET AL. LC1068 DRAFTER: HEIMAN

RELATING TO BREWING BEER IN MONTANA

3/12	INTRODUCED		
3/12	FIRST READING		
3/12	REFERRED TO BUSINESS & LABOR		
3/12	FISCAL NOTE REQUESTED		
3/14	FISCAL NOTE RECEIVED		
3/15	FISCAL NOTE PRINTED		
4/02	HEARING		
4/03	COMMITTEE REPORT—BILL PASSED AS AMENDED	90	7
4/04	2ND READING PASSED		
4/04	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY		
4/04	3RD READING PASSED	92	7
	TRANSMITTED TO SENATE		
4/07	FIRST READING		
4/07	REFERRED TO BUSINESS & INDUSTRY		
4/10	HEARING		
4/10	COMMITTEE REPORT—BILL CONCURRED		
4/14	2ND READING CONCURRED	50	0
4/15	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
4/19	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/05	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 546		
	EFFECTIVE DATE: 10/01/97		

HB 605 INTRODUCED BY RANEY, ET AL. LC1191 DRAFTER: PETESCH

PROHIBIT MONEY THAT IS DEPOSITED IN THE HIGHWAY ACCOUNT IN THE
STATE SPECIAL REVENUE FUND AND THAT IS SUBJECT TO ARTICLE
VIII, SECTION 6, OF THE MONTANA CONSTITUTION FROM BEING
TRANSFERRED BETWEEN PROGRAMS

3/12 INTRODUCED
3/12 FIRST READING
3/12 REFERRED TO APPROPRIATIONS
3/21 HEARING
3/28 MISSED DEADLINE FOR 67TH DAY TRANSMITTAL
DIED IN COMMITTEE

HB 606 INTRODUCED BY HURDLE LC0650 DRAFTER: HEIMAN

PROVIDE A HOMESTEAD EXEMPTION FOR OWNER-OCCUPIED
RESIDENCES

3/11 FISCAL NOTE REQUESTED
3/13 FISCAL NOTE RECEIVED
3/13 FISCAL NOTE PRINTED
3/14 INTRODUCED
3/14 FIRST READING
3/14 REFERRED TO TAXATION
3/21 HEARING
3/24 TABLED IN COMMITTEE
4/05 MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
DIED IN COMMITTEE

HB 607 INTRODUCED BY GRINDE LC0154 DRAFTER: NISS

PROVIDE FOR THE ISSUANCE OF HISTORIC RIGHT-OF-WAY DEEDS BY THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
GRANTING NONEXCLUSIVE EASEMENTS FOR HISTORIC USES OF
STATE LANDS FOR RIGHTS-OF-WAY

3/14	INTRODUCED		
3/14	FIRST READING		
3/14	REFERRED TO NATURAL RESOURCES		
3/14	FISCAL NOTE REQUESTED		
3/20	FISCAL NOTE RECEIVED		
3/21	HEARING		
3/21	FISCAL NOTE PRINTED		
3/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/26	2ND READING PASSED	95	4
3/27	3RD READING PASSED	93	7
	TRANSMITTED TO SENATE		
3/28	FIRST READING		
3/28	REFERRED TO NATURAL RESOURCES		
4/07	HEARING		
4/10	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/12	2ND READING CONCURRED	48	0
4/14	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/16	2ND READING AMENDMENTS CONCURRED	88	8
4/16	3RD READING CONCURRED AS AMENDED	91	9
4/20	SIGNED BY SPEAKER		
4/25	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
4/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 461		
	EFFECTIVE DATE: 10/01/97		

HB 608 INTRODUCED BY GRIMES, ET AL. LC1424 DRAFTER: NISS

SPECIFY THE STAFF-TO-CHILD RATIOS FOR DAY-CARE FACILITIES
BY REQUEST OF HOUSE HUMAN SERVICES COMMITTEE

3/14 INTRODUCED
3/14 FIRST READING
3/14 REFERRED TO HUMAN SERVICES & AGING
3/14 FISCAL NOTE REQUESTED
3/21 HEARING
3/24 TABLED IN COMMITTEE
DIED IN COMMITTEE

House BILL NO. 1604

INTRODUCED BY

James Rose, Brady, Eric Keenan, Ream, Mike Ols, Gehlbach, Mike McCam, Jeff

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO BREWING BEER IN MONTANA; ALLOWING CERTAIN DOMESTIC BREWERIES TO OBTAIN AN ENDORSEMENT TO SELL FOR ON- AND OFF-PREMISE CONSUMPTION BEER BREWED ON THE PREMISES; PROVIDING THAT A BREWER THAT SELLS BEER FOR ON-PREMISE CONSUMPTION MAY NOT HAVE GAMBLING ON THE PREMISES; PROVIDING THAT MALTING BARLEY MACHINERY AND EQUIPMENT ARE CLASSIFIED AS CLASS 6 PROPERTY; PROVIDING THAT PREMISES LICENSED FOR ON-PREMISE CONSUMPTION OF ALCOHOL MAY BE LICENSED AS A BREWERY IF GAMBLING DOES NOT OCCUR ON THE PREMISES; AUTHORIZING HOME BREWING THAT MEETS THE REQUIREMENTS OF FEDERAL LAW; AND AMENDING SECTIONS 15-6-136, 16-3-201, 16-3-213, 16-3-242, 16-4-101, 16-4-401, AND 16-6-301, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Domestic breweries -- retail sale of brewed beer or malt beverages -- gambling prohibited. (1) A brewery located in Montana and licensed as provided in Title 16, chapter 4, and that manufactures not more than 15,000 barrels of beer in a year may:

(a) at the brewery, sell beer that it brews on the premises directly to the consumer for consumption on or off the premises;

(b) provide, without charge, beer that it manufactures for consumption at the brewery at a location other than where retail sales are made.

(2) Prior to selling beer that it brews directly to consumers, a brewer shall obtain an on-premises consumption endorsement of its brewer's license from the department. A written application with an application fee of \$500 must be submitted to the department for its approval. The endorsement must be renewed annually upon payment of an annual fee of \$50. A brewery may not be granted an endorsement, or an issued endorsement must be revoked if:

(a) the department determines that the applicant's or endorsement holder's premises are unsuitable for on-premise consumption of beer;

(b) the applicant or endorsement holder has been convicted of illegal sales of beer or any other

1 violation of this code; or

2 (c) gambling has occurred on the premises.

3 (3) on-premise retail sales of beer may be conducted only between the hours of 8 a.m. and 10 p.m.

4 (4) An endorsement issued under this section is not a license to sell alcoholic beverages for
5 consumption on the premises for the purposes of authorizing gambling or gaming on the premises as
6 provided in Title 23, chapter 5.

7
8 **Section 2.** Section 15-6-136, MCA, is amended to read:

9 **"15-6-136. Class six property -- description -- taxable percentage.** (1) Class six property includes:

10 (a) livestock and other species of domestic animals and wildlife raised in domestication or a captive
11 environment, except for cats, dogs, and other household pets not raised for profit;

12 (b) items of personal property intended for rent or lease in the ordinary course of business,
13 provided each item of personal property satisfies all of the following:

14 (i) the full and true value of the personal property is less than \$5,000;

15 (ii) the personal property is owned by a business whose primary business income is from rental or
16 lease of personal property to individuals wherein no one customer of the business accounts for more than
17 10% of the total rentals or leases during a calendar year; ~~and~~

18 (iii) the lease of the personal property is generally on an hourly, daily, or weekly basis; and

19 (c) machinery and equipment used in canola seed oil processing facilities if:

20 (i) the operators of such facilities employ a minimum of 15 full-time employees; and

21 (ii) a canola seed oil processing facility locates in the state of Montana after July 25, 1989; and

22 (d) machinery and equipment used in a malting barley facility.

23 (2) "Canola seed oil processing facility" means a facility that:

24 (a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates ~~and~~
25 packages the edible oil into food products, or engages in any one or more of those processes; and

26 (b) employs at least 15 employees in a full-time capacity.

27 (3) "Malting barley facility" means a facility and integral machinery and equipment used principally
28 to malt malting barley and includes machinery and equipment to mix, blend, transport, transfer, or process
29 the barley and malt at the facility.

30 ~~(3)(4)~~ Class six property is taxed at 4% of its market value."

Section 3. Section 16-3-201, MCA, is amended to read:

"16-3-201. Possession, manufacture, importation, or disposal of beer in manner other than prescribed unlawful -- personal brewing. (1) ~~It shall be~~ is unlawful to manufacture, import, sell or dispose of, or possess for the purpose of sale beer of any kind or character of an alcoholic content greater than ~~herein prescribed~~ authorized or other than in the manner permitted by this code.

(2) This code does not prohibit the manufacture of beer, for personal or family use and not intended for sale, that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer."

Section 4. Section 16-3-213, MCA, is amended to read:

"16-3-213. Brewers or beer importers not to retail beer -- original package and taproom exceptions. (1) ~~It shall be~~ Unless licensed under 16-4-101(2), it is unlawful for any brewer or breweries or beer importer to have or own any permit to sell or to retail beer at any place or premises, ~~it being the declared intention to prohibit brewers and beer importers from engaging in the retail dispensation of beer; provided, however, that this shall not be so construed as to~~

(2) Subsection (1) does not prohibit breweries from:

(a) ~~making sale and delivery of~~ selling or delivering beer manufactured by them, in original packages, at either wholesale or retail, ~~or;~~

(b) ~~from~~ providing, without charge, their products for consumption on their licensed premises; or

(c) otherwise selling beer in accordance with [section 1]."

Section 5. Section 16-3-242, MCA, is amended to read:

"16-3-242. Financial interest in retailers prohibited. (1) ~~No~~ A brewer, beer importer, or wholesaler ~~shall may not~~ advance or loan money to or furnish money for or pay for or on behalf of any retailer any license or tax which may be required to be paid for any retailer, and ~~no~~ a brewer, beer importer, or wholesaler ~~shall may not~~ be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A brewer, beer importer, or wholesaler ~~shall be deemed~~ is considered to have ~~such~~ a financial interest within the meaning of this section if:

(1)(a) ~~such~~ the brewer, beer importer, or wholesaler owns or holds any interest in or a lien or

1 mortgage against the retailer or ~~his~~ the premises;

2 ~~(2)(b) such the~~ brewer, beer importer, or wholesaler is under any contract with a retailer concerning
3 future purchases ~~and/or or~~ sale, or both, of merchandise by one from or to the other;

4 ~~(3)(c)~~ any retailer holds an interest, as a stockholder or otherwise, in the business of the
5 wholesaler.

6 (2) The issuance of a license and subsequent manufacture of beer on premises licensed for
7 on-premise consumption as provided in 16-4-101(2) does not constitute interest in a brewer that is
8 prohibited by this section."

9
10 **Section 6.** Section 16-4-101, MCA, is amended to read:

11 **"16-4-101. Applications for sale, import, or manufacture of beer -- qualifications of applicant. (1)**

12 (a) Any person desiring to manufacture, import, or sell beer under the provisions of this code shall first
13 apply to the department for a license to do so and pay with such the application the license fee prescribed.
14 The department shall require of such the applicant satisfactory evidence that the applicant is of good moral
15 character and a law-abiding person.

16 ~~(2)(b)~~ Upon being satisfied, from ~~such the~~ application or otherwise, that ~~such the~~ applicant is
17 qualified, the department shall issue ~~such the~~ license to ~~such the~~ person, ~~which~~ The license shall must be
18 at all times prominently displayed in the place of business of such the applicant.

19 ~~(3)(c)~~ If the department ~~shall find~~ finds that ~~such the~~ applicant is not qualified, ~~no~~ a license ~~shall~~
20 may not be granted and ~~such the~~ license fee ~~shall must~~ be returned.

21 (2) The department shall grant a license under this section to a holder of an all-beverages license
22 for on-premise consumption of alcohol issued under 16-4-201 to manufacture beer on the premises if the
23 premises are not licensed for gambling or gaming under the provisions of Title 23, chapter 5. The license
24 granted under this section must be revoked if gambling occurs on the premises.

25 (3) A person manufacturing beer for personal or family use under 16-3-201(2) is not required to
26 be licensed."

27
28 **Section 7.** Section 16-4-401, MCA, is amended to read:

29 **"16-4-401. License as privilege -- criteria for decision on application. (1)** A license under this code
30 is a privilege ~~which that~~ the state may grant to an applicant and is not a right to which any applicant is

1 entitled.

2 (2) Except as provided in subsection (6), in the case of a license that permits on-premises
3 consumption, the department ~~must~~ shall find in every case in which it makes an order for the issuance of
4 a new license or for the approval of the transfer of a license that:

5 (a) in the case of an individual applicant:

6 (i) the applicant ~~will~~ may not possess an ownership interest in more than one establishment
7 licensed under this chapter for all-beverages sales;

8 (ii) the applicant ~~does~~ may not possess an ownership interest in an agency liquor store as defined
9 in 16-1-106;

10 (iii) except as provided in subsection (7) the applicant or any member of the applicant's immediate
11 family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of
12 alcoholic beverages;

13 (iv) the applicant is a resident of the state and is qualified to vote in a state election;

14 (v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
15 business person and citizen demonstrate that the applicant is likely to operate the establishment in
16 compliance with all applicable laws of the state and local governments; and

17 (vi) the applicant is not under the age of 19 years; and

18 (b) in the case of a corporate applicant:

19 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
20 (2)(a)(iv);

21 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual
22 applicant listed in subsection (2)(a);

23 (iii) the corporation is authorized to do business in Montana; and

24 (iv) in the case of a corporation not listed on a national stock exchange, each owner of stock meets
25 the requirements of subsections (2)(a)(i) and (2)(a)(ii); and

26 (c) in the case of any other business entity as applicant:

27 (i) if the applicant consists of more than one individual, all must meet the requirements of
28 subsection (2)(a); and

29 (ii) if the applicant consists of more than one corporation, all must meet the requirements of
30 subsection (2)(b).

(3) In the case of a license that permits only off-premises consumption, the department ~~must~~ shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant ~~will~~ may not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant ~~does~~ may not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(vi) the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iv);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a) ~~of this section~~; and

(iii) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b).

(4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department ~~must~~ shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

1 (a) in the case of an individual applicant:

2 (i) the applicant has no ownership interest in any establishment licensed under this chapter for retail
3 alcoholic beverages sales;

4 (ii) the applicant ~~does~~ may not possess an ownership interest in an agency liquor store as defined
5 in 16-1-106;

6 (iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a
7 felony, rights have been restored;

8 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
9 business person and citizen demonstrate that the applicant is likely to operate the establishment in
10 compliance with all applicable laws of the state and local governments;

11 (v) the applicant is not under the age of 19 years; and

12 (vi) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is
13 owned or controlled by a manufacturer of an alcoholic beverage; and

14 (b) in the case of a corporate applicant:

15 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
16 (4)(a)(iii);

17 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual
18 listed in subsection (4)(a) of this section;

19 (iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is
20 owned or controlled by a manufacturer of an alcoholic beverage; and

21 (iv) the corporation is authorized to do business in Montana; and

22 (c) in the case of any other business entity as applicant:

23 (i) if the applicant consists of more than one individual, all must meet the requirements of
24 subsection (4)(a); and

25 (ii) if the applicant consists of more than one corporation, all must meet the requirements of
26 subsection (4)(b).

27 (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b)
28 apply separately to each class of stock.

29 (6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant
30 to 16-4-302.

(7) The issuance of a license and subsequent manufacture of beer on premises licensed for on-premise consumption as provided in 16-4-101(2) does not constitute interest in a manufacturer that is prohibited in subsection (2)(a)(iii)."

Section 8. Section 16-6-301, MCA, is amended to read:

"16-6-301. Transfer, sale, and possession of alcoholic beverages -- when unlawful. (1) Except as provided by this code, ~~no~~ a person or the person's agents or employees ~~shall may not, within the state, by himself, his clerk, servant, or agent;~~

(a) expose or keep an alcoholic beverage for sale or;

(b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic beverage; or,

(c) in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person any an alcoholic beverage.

(2) ~~No~~ A person shall may not have or keep any alcoholic beverage ~~which that~~ has not been purchased within the state of Montana.

(3) ~~Nothing in this code shall~~ This section does not prohibit;

(a) ~~any a person entering this state from any other another state or from any foreign country from having in his the person's possession an amount not to exceed 3 wine gallons of alcoholic beverage which beverage shall have been that was purchased in another state or foreign country, but no person claiming to have so entered the state shall at any time have in his possession more than 3 wine gallons of alcoholic beverage which shall not have been purchased within the state of Montana;~~

(b) possession of beer produced for personal or family use and not intended for sale that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer;

(c) ~~This subsection shall not apply to the department or to the keeping or having of possession of~~ alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the manufacture of ~~such those~~ alcoholic beverages; ~~or~~

(d) ~~to the keeping or having of any possession of~~ proprietary or patent medicines or of any extracts, essences, tinctures, or preparations ~~where such having and keeping if the possession is authorized~~ by this code; or

1 ~~(3)(e) Nothing contained in this section shall apply to the~~ possession by a sheriff or his bailiff of
2 alcoholic beverages seized under execution or other judicial or extrajudicial process or ~~to~~ sales under
3 executions or other judicial or extrajudicial process to the department or a licensee.

4 (4) Except as provided in this code, ~~no~~ a person or the person's agents or employees shall, within
5 ~~the state, by himself, his clerk, servant, or agent~~ may not:

6 (a) attempt to purchase any alcoholic beverage;

7 (b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

8 (c) in consideration of the sale or transfer of any property or for any other consideration or at the
9 time of the transfer of any property, take or accept from any other person any alcoholic beverage."

10
11 NEW SECTION. **Section 9. Codification instruction.** [Section 1] is intended to be codified as an
12 integral part of Title 16, chapter 3, part 2, and the provisions of Title 16, chapter 3, part 2, apply to
13 [section 1].

14 -END-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on April 2, 1997, at
8:00 AM, in Room 325

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 604; HB 615 (3/24/97)
Executive Action: SB 89; HB 604; HB 615

HEARING ON HB 615

Opening Statement by Sponsor: Rep. Cobb, H D 11 introduced the bill.

{Tape: 1; Side: 1; Approx. Time Count: .01; Comments: None.}

HEARING ON HB 604

Opening Statement by Sponsor: Rep. Harper, H.D. 2 introduced the bill. EXHIBIT 4 AND 5.

{Tape: 1; Side: 1; Approx. Time Count: 26.9; Comments: None.}

Proponents' Testimony:

Rep. Rose, H D 87. EXHIBITS 6 AND 7.

{Tape: 1; Side: 2; Approx. Time Count: .3; Comments: None.}

Carl Peterson, MT Malting

{Tape: 1; Side: 2; Approx. Time Count: 4.4; Comments: None.}

Gary Pierson, MT Barley Growers

{Tape: 1; Side: 2; Approx. Time Count: 6.5; Comments: None.}

Bob Stevens, MT Graingrowers Assn.

{Tape: 1; Side: 2; Approx. Time Count: 7.7; Comments: None.}

James Conway

{Tape: 1; Side: 2; Approx. Time Count: 8.4; Comments: None.}

Todd Daniels, Castle Brewing Co.

{Tape: 1; Side: 2; Approx. Time Count: 8.7; Comments: None.}

Brian Smith, store owner

{Tape: 1; Side: 2; Approx. Time Count: 14.2; Comments: None.}

Opponents' Testimony:

Rep. Keenan, HD 75

{Tape: 1; Side: 2; Approx. Time Count: 15.4; Comments: None.}

Tom Hopgood, MT Beer and Wine Wholesalers, EXHIBITS 8, 9 10.

{Tape: 1; Side: 2; Approx. Time Count: 19.8; Comments: None.}

Rich Miller, for Mark Staples Montana Tavern Owners Assn.

{Tape: 1; Side: 2; Approx. Time Count: 27.8; Comments: None.}

Christine Lee

{Tape: 1; Side: 2; Approx. Time Count: 28.8; Comments: None.}

John Decker, Beer Wholesalers, Billings, MT

{Tape: 1; Side: 2; Approx. Time Count: 31.0; Comments: None.}

Dave Brown, MT Ind. Machine Operators

{Tape: 1; Side: 2; Approx. Time Count: 32.8; Comments: None.}

Steve Browning, Anhauser Busch

{Tape: 1; Side: 2; Approx. Time Count: 33.3; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 1; Side: 2; Approx. Time Count: 36.4; Comments: None.}

Closing by Sponsor: Rep. Harper closed.

{Tape: 2; Side: 2; Approx. Time Count: 1.9; Comments: None.}

EXECUTIVE ACTION ON SB 89

Motion: Rep. Simon moved do concur SB 89.

{Tape: 2; Side: 2; Approx. Time Count: 7.3; Comments: None.}

Motion/Vote: Rep. Simon moved Simon amendments. Motion carried unanimously.

Tape: 2; Side: 2; Approx. Time Count: 8.0; Comments: None.}

Motion/Vote: Rep. Simon moved to adopt Mills amendments. Motion carried unanimously.

{Tape: 2; Side: 2; Approx. Time Count: 13.7; Comments: None.}

Motion: Rep. Simon moved do concur as amended.

{Tape: 2; Side: 2; Approx. Time Count: 18.8; Comments: None.}

Motion/Vote: Rep. Devaney moved to adopt Ronan and Hot Springs conceptual amendments. Motion failed. 3-16 Reps. Krenzler, Tuss and Bookout voted yes.

{Tape: 2; Side: 2; Approx. Time Count: 26.1; Comments: None.}

Motion/Vote: Rep. Simon moved do concur as amended. Motion carried. Motion carried 15-4. Reps. Tropila, Tuss, Ewer and Sliter voted no.

{Tape: 2; Side: 2; Approx. Time Count: 29.2; Comments: None.}

EXECUTIVE ACTION ON HB 615

Motion: Rep. Krenzler moved do pass HB 615.

{Tape: 2; Side: 2; Approx. Time Count: 34.2; Comments: None.}

Motion/Vote: Rep. Krenzler moved to adopt Krenzler amendments. Motion carried unanimously.

{Tape: 2; Side: 2; Approx. Time Count: 34.5; Comments: None.}

Motion/Vote: Rep. Krenzler moved do pass as amended. Motion carried unanimously.

{Tape: 2; Side: 2; Approx. Time Count: 39.1; Comments: None.}

EXECUTIVE ACTION ON HB 604

Motion: Rep. Tuss moved do pass HB 604.

{Tape: 3; Side: 1; Approx. Time Count: .4; Comments: None.}

Motion/Vote: Rep. Tuss moved to adopt Tuss amendments. Motion pass unanimously,

{Tape: 3; Side: 1; Approx. Time Count: .5; Comments: None.}

Motion/Vote: Rep Devaney moved do pass as amended. Motion carried 18-1. Rep. Pavlovich voted no.

{Tape: 3; Side: 1; Approx. Time Count: 3.7; Comments: None.}

INSTITUTE FOR BREWING STUDIES
736 PEARL STREET
POST OFFICE BOX 1679
BOULDER, COLORADO 80306-1679 USA
FACSIMILE 303 447-2825
TELEPHONE 303 447-0816

A DIVISION OF THE ASSOCIATION OF BREWERS

NO.667 P.2
EXHIBIT 4
DATE 4/2/97
HB 604

To whom it may concern:

According to Institute for Brewing Studies statistics, the average brewpub generates \$1.75 million annual revenue. In 1996, more than 200 brewpubs opened in the United States. As of March 1, 1997, there were 764 brewpubs operating in the United States.



Brewpubs, in essence, are benefiting society as a whole by helping to educate consumers about the positive qualities of beer. Brewpubs and microbreweries in 48 states and the District of Columbia are now teaching people about flavor in beer - and about the history and culture of beer and brewing. Consumers of craft-style beers are more inclined to "drink less, but drink better," as the higher-priced craft brands are considered more an "affordable luxury" than regular beers. Thus these more "specialty" beers are consumed in a similar fashion to how specialty coffees and ice creams are generally consumed, i.e. not as often and not in as large quantity as the cheaper brands.

Brewpubs create the same impact on the environment as any bakery or restaurant, so in terms of zoning, these breweries are most often considered in either identical or very similar categories to bakeries and/or restaurants. In a recent survey of American brewpubs, when asked to name the type of zoning in place for their brewery-restaurant, 85 percent of those surveyed responded "retail," "retail/commercial," "commercial," or "C2 Commercial"; 10 percent responded "Central Business District"; and 5 percent responded "light industrial." A total of 55 brewpubs were surveyed from 35 different states and cities, including Telluride, Colo., Portland, Ore., Seattle, Wash., Phoenix, Ariz., Davis, Calif., Chicago, Ill., Dallas, Texas and Baltimore Md.

The Institute for Brewing Studies believes brewpubs should be considered no different than any restaurant and/or bakery operation and should be zoned identically.

I hope this information will be helpful. If you have any questions regarding this or any matter regarding brewpubs, contact me at (303) 447-0816, ext 114 or by Internet jim@aob.org. Thank you for your time.

Sincerely,

Jim Parker
Administrator

(b) such winery or table wine distributor is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from or to the other; or

(c) such table wine distributor extends more than 7 days' credit to a retail licensee or furnishes to any retail licensee any furniture, fixtures, or equipment to be used in the dispensation or sale of table wine; or

(d) any retailer holds an interest as a stockholder, or otherwise, in the business of the table wine distributor.

History: En. Sec. 8, I.M. No. 81, app. Nov. 7, 1978.

16-3-407 through 16-3-410 reserved.

16-3-411. Domestic winery. A winery located in Montana and registered pursuant to 16-4-107 may:

(1) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;

(2) sell wine it produces at wholesale to wine distributors;

(3) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;

(4) provide, without charge, wine it produces for consumption at the winery;

(5) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces; or

(6) obtain a special event permit under 16-4-301.

History: En. Sec. 1, Ch. 566, L. 1987; amd. Sec. 34, Ch. 530, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 530 in (2), after "wholesale", deleted "to the department or".
Amendment effective April 25, 1995.

16-3-412 through 16-3-414 reserved.

16-3-415. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agreement of distributorship" means a contract, agreement, commercial relationship, license, or other arrangement for a definite or an indefinite period of time between a supplier and a table wine distributor that provides for the sale of table wine by the supplier to the table wine distributor.

(2) "Good cause" means failure by a table wine distributor to comply with reasonable business requirements imposed, or sought to be imposed, by a supplier under the terms of an agreement of distributorship if the requirements are imposed on other similarly situated distributors either by the terms of their agreements or in the manner of their enforcement by the supplier.

(3) "Person" means a natural person, corporation, partnership, trust, agency, or other entity and includes individual officers, directors, or other persons in active control of the activities of the entity.

(4) "Supplier" means a winery or an importer of table wines that enters into or is a party to an agreement of distributorship with a table wine distributor.

History: En. Sec. 1, Ch. 314, L. 1991.

16-3-416. Table wine distributor provisions. (1) A supplier or table wine distributor must have a written agreement of distributorship that pro-

to Chairman Simon

EXHIBIT 5

DATE 7/2/97

HB 604

To the Montana State Legislature:

I am Thomas D. Kerns of Portland, Oregon. I am a brewer and consultant in the growing craft-brewing industry. I am currently in the midst of developing a business in Montana. Specifically I am developing a brewpub-restaurant in the ski resort of Big Sky Montana. Financing, planning, and design are all but completed but there remains one problem: brewpubs are still illegal in Montana.

Montana is now just one state of two (the other being Mississippi) where a manufacturer of beer cannot sell its product on premises as retail sales. This limitation is supported as protectionism by the Montana Tavern Association's lobbyist organization. They see this as a threat to their own livelihood. I see it as an opportunity for myself and other taverns or bars to offer a various and wider range of beverages and atmosphere. Brewpubs have been part of western culture since the early 16th century. Prohibition eliminated them in the 1920's. Conservative Neo-Prohibition ideals kept this illegal in the US until the 1980's. Since then most states across the country began to sweep away antique ideas and prohibitive laws governing beer brewing and its dispensation. What brewpubs offer is a friendly community gathering place focusing on hand-crafted all natural beers created by a member of the given community, mixed with a wide range of food offerings from pub foods to fine cuisine. These places of business offer dining and craft beer enjoyment to families as well as individuals. They are generally not your typical tavern or bar drinking atmosphere. I strongly support allowance of people like myself to do this kind of business in Montana communities. This would be no threat to those the MTA represent, their fears are unfounded. Our type of business offers a positive multidimensional community eatery and beer-house of distinctive character. Furthermore our products could also be sold wholesale through distributors to help support and add to the selections of beers taverns and bars can provide. John Kircher, the owner and General manager of Big Sky Resort is very supportive of my goals to add to the experiences his guests receive. He can be reached for comment at: 406-580-4211, 406-995-4211.

I have included a copy of the Oregon State Liqueur laws that govern these types of businesses. I encourage you all to look at these as they are a standard reflection of how other states are allowing free enterprise to exist in the beer industry without unnecessary protectionism. I strongly support the simplification and the legislation necessary to allow me and others to do business within Montana and its established communities.

Thank you very much for your time and concerted considerations.

Tom Kerns

Sincerely, Thomas D. Kerns
6427 NE 26th Avenue
Portland, Oregon, 97211
(503) 288-4740

**TETON
COUNTY**



**BOARD OF COUNTY COMMISSIONERS
PO. BOX 610
CHOTEAU, MONTANA 59422**

EXHIBIT 6 OFFICE (406) 466-2151
DATE 4/2/97 FAX (406) 466-2138
HB 664

**R. F. SAM CARLSON
DISTRICT #1, FAIRFIELD**

**C. ALBERT CARLSON
DISTRICT #2, CHOTEAU**

**ADAM F. DAHLMAN
DISTRICT #3, DUTTON**

February 20, 1997

Honorable Sam Rose
1051 Breckenridge
Helena, MT. 59620

Dear Sam:

SUBJECT: TETON COUNTY DEVELOPMENT CORP. & MT. MALTING PROJECT

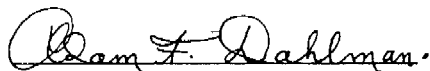
The Teton County Commissioners have met with the principals of the Montana Malting Company during the past week about the possibility of locating a processing plant in Teton County.

We strongly support anything that would benefit the county and community. This project would generate a certain amount of employment and add revenue to the county in the form of taxes.

We would lend our support and consideration to the Teton County Development Corporation and Montana Malting Project. We feel it would benefit our community in a very positive way.

Sincerely,

TETON COUNTY COMMISSIONERS


Adam F. Dahlman, Chairman

Unavailable for Signature
C. Albert Carlson, Vice-Chairman


R. F. "Sam" Carlson, Member

CITY OF CHOTEAU

36 FIRST AVE. N.W.
P.O. DRAWER X
CHOTEAU, MONTANA 59422

EXHIBIT 7
DATE 7/2/97
HB 6007

OFFICE OF CITY SUPERINTENDENT
DIRECTOR OF CITY OPERATIONS

February 19, 1997

To: Representative Sam Rose
Senator Gary Aklestad

Contact Person:

City of Choteau-Jim Christiaens 466-2510
Teton County Development Corporation-Jay Dunckel 466-5772

Re: Montana Malting Company

Gentlemen,

The City of Choteau and the Teton County Development Corporation have been working with the principals of Montana Malting Company the past several months about the possibility of locating a manufacturing plant in Teton County.

This enterprise would add value to an agricultural product and be marketed interstate bringing money into Montana from out of state.

It would also generate approximately 7 jobs and add to the declining tax base in Teton County.

The City of Choteau has agreed in principle to make land available to locate this plant, on a long term lease basis, through the Teton County Development Company at a nominal lease rate.

If the legislature should agree to fund some seed money to further pursue this project we feel it should be channeled through the Teton County Development Company to allow for some measure of accountability of the project funds.

Sincerely,

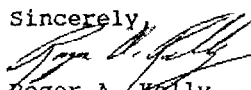

Roger A. Kelly
Mayor

EXHIBIT 8
DATE 4/2/97
HB 604

VOTE "NO"

ON HOUSE BILL 604

WE, THE UNDERSIGNED, urge the Montana Legislature to VOTE NO
ON HOUSE BILL 604, the so-called brew pub legislation. It is
contrary to the best interests of the people of this state, will
cause a substantial devaluation of many Montana businesses and
will cause a major disruption in many other businesses.

<u>PRINT NAME</u>	<u>SIGNATURE</u>	<u>CITY OR TOWN</u>
<u>Andy Hoyt</u>	<u>[Signature]</u>	<u>Helena MT</u>
<u>Brando Hoyt</u>	<u>[Signature]</u>	<u>Helena MT</u>
<u>BRAD EASBEY</u>	<u>[Signature]</u>	<u>HELENA MT</u>
<u>FRANK EASBEY</u>	<u>[Signature]</u>	<u>HELENA MT</u>
<u>Daniel P. Hamper</u>	<u>[Signature]</u>	<u>Helena Mt.</u>
<u>Vance Emerson</u>	<u>[Signature]</u>	<u>Helena mt</u>
<u>Jim Peck</u>	<u>[Signature]</u>	<u>Helena MT</u>
<u>Lewis Logan</u>	<u>[Signature]</u>	<u>Helena, MT.</u>
<u>Jackie Smith</u>	<u>[Signature]</u>	<u>HELENA, MT</u>
<u>Tim McEwen</u>	<u>[Signature]</u>	<u>Helena MT</u>
<u>DAVID A. VAN WINK</u>	<u>[Signature]</u>	<u>Helena MT.</u>
<u>Weyman Hewitt</u>	<u>[Signature]</u>	<u>Helena, MT.</u>
<u>Wayne Benson</u>	<u>[Signature]</u>	<u>E. Helena MT</u>
<u>William A Neisser</u>	<u>[Signature]</u>	<u>Helena, MT.</u>

Exhibit # 8 Hb 604

Petition (21 pages)

The full exhibit is available from:

MT Historical Society Archives

225 North Roberts

P.O. Box 201201

Helena, MT 59620-1201

Phone # (406)444-4774



Coors Brewing Company
Golden, Colorado 80401

EXHIBIT 9
DATE 4/2/97
HB 604

March 27, 1997

The Honorable Bruce Simon
Chairman, House Business and Labor Committee
PO Box 201701
Helena, Montana 59620-1701

Dear Representative Simon:

Coors Brewing Company opposes HB604. The proposed legislation has several provisions which give special privileges to selected domestic breweries located in Montana.

Special privileges noted in the bill text include: The proposed Section 1, Domestic breweries -- retail sales, which allows a brewer producing less than 15,000 barrels of beer per year to "sample" product at locations away from the brewery licensed location.

Also in Section 1 of HB604, provisions would permit brewing facilities producing less than 15,000 barrels per year the privilege of obtaining an on-premise retail sales license under a special arrangement.

The proposal appears to unfairly favor one group of alcohol beverage licensees over another and may place at a disadvantage current retailers, wholesalers and brewers who have invested in Montana. The law may also effect, in a negative manner, employees of many currently operating businesses in the state.

Coors Brewing Company requests that you amend or reject the bill to maintain a fair and level playing field for business interests who continue to view Montana as a great state in which to do business.

Thank you and your committee for your consideration on this matter.

Sincerely,

A. Mikashus

Andrew J. Mikashus
Western Region Manager

AM:km



7031 KOLL CENTER PKWY STE 220
PLEASANTON CA 94566-3101

PHONE: (510) 426-0050

March 31, 1997

The Honorable Bruce Simon
Chairman, House Business and Labor Committee
P.O. Box 201701
Helena, MT 59602-1701

Re: Miller Brewing Company's Opposition to HB 604 (Harper)

Dear Representative Simon:

Miller Brewing Company is opposed to HB 604 by Representative Harper which would establish a special license for brewers who produce less than 15,000 barrels of beer per year. Miller believes that establishing such a license creates an unfair playing field in Montana by granting special privileges to a select group of breweries located within the state.

Specifically, HB 604 allows brewers producing less than 15,000 barrels per year to obtain an on-premise retail license and provide samples off the premises of the brewery. This type of language creates an unfair advantage for certain brewers in Montana and has an overall negative impact on beer manufacturers, wholesalers, and retailers who have been doing business within the state for some time.

In addition, several restrictions within the proposed license would severely limit the ability of current wholesalers to market their products effectively to these designated licenses. Miller Brewing Company is opposed to any restrictions that impact or upset the three-tier system of alcohol distribution.

Miller supports the expansion and growth of the beer industry. However, we believe that creating special licenses that apply to only a select few will do more harm to the industry than good. For these reasons we respectfully urge you to oppose HB 604.

Sincerely,

César Vargas
Western Government Affairs Representative

EXHIBIT 10
DATE 4/2/67
HB 604

HB 604

**MONTANA BEER & WINE WHOLESALERS ASSOCIATION
STATEMENT IN OPPOSITION
TOM K. HOPGOOD, EXECUTIVE SECRETARY**

The Montana Beer & Wine Wholesalers Association (MBWWA) is a trade association consisting of every beer wholesaler in the state of Montana. Our members do business in every county, every city, and every town in this state. All of our members are small businesses. Most employ less than 20 people.

The vast majority of beer distributors nationally and in Montana are family-owned businesses. Most have been in the same family for at least two generations. To name a few:

Lee Distributing, Kalispell
Devine Brothers, Great Falls
Intermountain, Billings
Briggs Distributing, Billings
Earl's Distributing, Missoula
Sandy Mac's Distributing, Helena
Clausen Distributing, Helena

MBWWA members directly employ 700 persons as salesmen, drivers, dock workers, bookkeepers and secretaries. We account for an additional 1,400 jobs when the so-called "ripple" effect is taken into consideration. MBWWA members pay state and federal beer excise taxes in the amount of \$16,720,000.00, \$3,250,000.00 of which is the state's share. Wholesalers also pay property, motor vehicle, payroll, and workers' compensation taxes.

The MBWWA is unanimously and strenuously opposed to HB 604.

The first reason the MBWWA is opposed to the bill is historical. A whole library has been written about how we got to where we are today in the regulation of alcoholic beverages. When you study the literature, a phrase which crops up with some

regularity is "tied house." The phrase describes the common pre-prohibition distribution scheme where the breweries owned or controlled the saloons. The phrase "lock, stock and barrel" derives from this period as the brewers owned the taverns "lock, stock and barrel."

It was common for the brewer, if it did not own the tavern outright, to sell beer on extended credit, furnish equipment and supplies, charge little or no interest and to pay rebates (or kickbacks) for pushing their product or carrying it exclusively. Competition for control of retail outlets was fierce and tremendous pressure was exerted on retailers to maximize sales without regard to the well being of customers or the general public. Excise tax evasion was the rule rather than the exception.

These are the conditions which led the nation into prohibition where the sale or even possession of alcohol was made illegal by federal law.

When the 21st Amendment was ratified in 1933, ending the national dry spell, federal and state lawmakers resolved to abandon the old distribution system for beer, wine, and spirits. Thus, a three-tier system was born to eliminate the direct link between brewers and retailers which caused so many of the pre-prohibition problems. The new system has four primary goals:

A. To avoid the overly aggressive marketing and sales practices of the pre-prohibition era;

B. To generate revenues that can be collected from the industry efficiently;

C. To facilitate state and local control of licensed beverage products; and

D. To encourage moderate consumption.

The common thread and hallmark of our three-tier system is the complete separation of the retailer from the manufacturer. As a matter of policy, all our laws and regulations are based on maintaining the total independence of the retailer. It is prohibited for a manufacturer to set retail prices; neither can a manufacturer set quotas or loan money to retailers. We believe the policy reasons for the separation are sound.

HB 604 would tear the separation down. Manufacturers would be retailers and all the laws, rules, and regulations prohibiting the "tied house" would be thrown out the window.

For this reason, we oppose HB 604.

The second reason the MBWWA opposes HB 604 is that it devalues existing on-premises licenses. When you scrape the rhetoric away, this bill establishes a special on-premises beer license for \$500. As you know, on-premises licenses are under the quota system. Only so many are allowed for each locality computed on the basis of population. These licenses are valuable, selling for \$150,000 to \$350,000 per license, depending on the local market. We have heard of one going for over \$400,000. When you look underneath HB 604, all it does is allow a person to pay \$500 and do what other people have paid 30, 60, or 80 times as much for. We believe this is blatantly unfair.

The third reason the MBWWA opposes HB 604 is that this legislature is well on its way to passing Senator Waterman's SB 354, the so-called cabaret license bill.

Although similar bills have been killed in the past, this session is different with a compromise being reached between the Montana Tavern Association and cabaret license supporters. The bill was recently endorsed by the Senate Tax Committee and is expected to clear the Senate.

SB 354 accomplishes the aim of this bill but within parameters which are acceptable to the MBWWA.

The bill would allow limited beer and wine licenses based on quota throughout the state.

Depending on capacity, the new licenses would cost \$5,000, \$10,000, or \$20,000. Granted this is more expensive than the \$500 brewers' endorsement contemplated by HB 604. But it is still nominal when compared with the market price. If HB 354 passes (and it looks like it will) one of the "special" cabaret licenses could be affiliated with a brewery and the enterprise could do everything contemplated by HB 604.

The fourth reason the MBWWA is opposed to this bill is that the state of Montana has gone far enough in giving special dispensation to small breweries. Under existing law, a small brewery is allowed to provide samples of its product at its premises and to sell product directly to consumers for off-premises consumption. Presently, small brewers are allowed to sell directly to other retailers. As such, the wholesale market is already wide open to small brewers.

At the same time the wholesale market is completely open to small brewers or brew pubs, HB 604 would completely close their market to wholesalers. Under the provisions of HB 604, brew pubs would be able to sell their own product and only their own product. From the wholesalers' viewpoint this is blatantly and manifestly unfair.

The fifth reason the MBWWA opposes HB 604 is that on-premises licensees can presently affiliate with small brewers. That has been done in a number of instances across the state. There is nothing which prohibits on-premises licensees from affiliating with a small brewer as long as there are two licenses. As mentioned earlier, it is at least conceivable that one of the licenses could be one of the special cabaret licenses which will be established under SB 354.

The sixth reason the MBWWA opposes this bill is that we have been extremely frustrated in working on this bill. We have stood, along with the Montana Tavern Association, ready, willing, and able to work toward a resolution of the complex issues which are involved in this bill and we have been offering to do so. To date, we have received no reply.

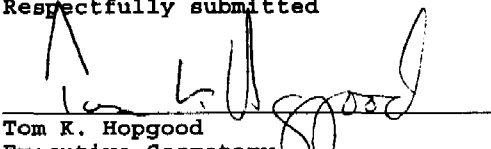
We do not know, to this day, who the parties are who are moving for this bill to be passed. We contacted the two best-known existing brew pubs in the state, Spanish Peaks in Bozeman, and Sleeping Giant in Helena. Both of these enterprises inform us that they are vehemently opposed to the bill. We did not check with any other existing brew pubs but would remind the

Committee that brew pubs existing in Billings and Missoula in 1995 opposed the same type of legislation.

We believe that the issues which exist in the brew pub bill, if not completely solved by the cabaret bill, can be resolved through careful discussions. However, introducing a bill of this significance in the last half of the legislative session does not allow adequate time to indulge in these discussions.

For all of the reasons stated, we would urge the Committee to quickly table this bill.

Respectfully submitted



Tom K. Hopgood
Executive Secretary
Montana Beer & Wine Wholesalers
Association

1995 Economic Contribution of the Beer Industry to —The State of Montana —

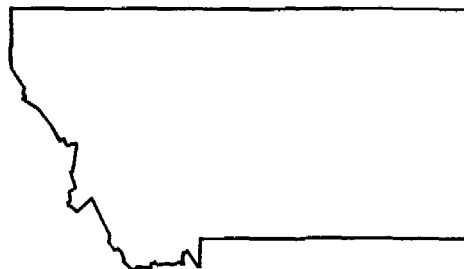
Beer Industry Overview

Excise Taxes Paid by Beer Industry

Federal	\$13,470,000
State	\$3,250,000
Total	\$16,720,000

Total Economic Impact

Jobs	17,730
Wages	\$257,920,000
Economic Contribution	\$875,000,000



Economic Details

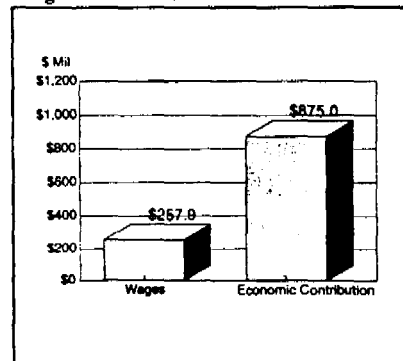
Sales by Industry Tier (\$000)		Establishment Type		Count
Brewers	\$5,240	Major Brewers		0
Wholesalers	\$113,550	Regional Brewers		0
Retailers	\$218,300	Microbreweries & Brewpubs		11
On Premise	\$117,800	Beer Whslr Facilities in State		42
Off Premise	\$100,500	Beer Whslrs Distributing in State		42
		On Premise Retailers		2,320
		Off Premise Retailers		920
Impact of Beer Industry				
	Jobs	Wages	Econ. Contrib.	
Brewers	3,960	\$77,310	\$320,250	
Wholesalers	2,160	\$41,850	\$126,770	
Retailers	11,610	\$138,760	\$427,980	
Total	17,730	\$257,920	\$875,000	

Fact: Each 10 jobs in the beer industry help create an additional 20 jobs in other industries.

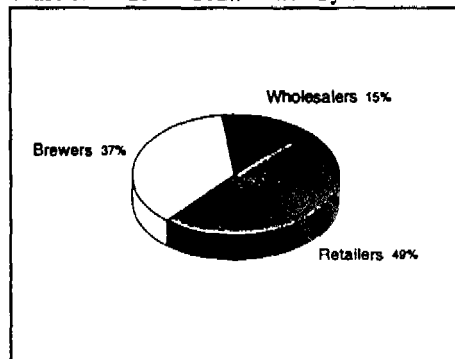
Source: Steve L. Barsby & Associates, Inc.

Total Impacts of Beer Industry in the State of Montana

Wages and Economic Contribution



Share of Economic Contribution by Tier



Session

The Independent Record

Panel OKs beer, wine bill

By ERICA CURLESS
IR State Bureau

A Senate panel Wednesday approved, by an 8-to-1 margin, a compromise bill that would create a new category of beer and wine licenses for Montana restaurants without gambling machines.

Senate Bill 354, by Sen. Mignon Waterman, D-Helena, caused heated debate two weeks ago between restaurant, tavern and casino owners. But the factions compromised and offered amendments Wednesday that secured the bill's passage through the Senate Taxation Committee.

RESTAURANT OWNERS without licenses complained that their customers want a glass of wine or beer with their meals, but they are unable to afford licenses under the current system. But bars and casinos with beer and wine or all beverage licenses said it would be unfair to offer many new licenses, which would devalue the ones they paid for.

Supporters of Waterman's bill had threatened to mount an initiative cam-

paign to pass the law if the Legislature killed as it has several times in recent sessions.

Under SB354, which goes to the Senate next, creates a new category of beer and wine licenses for restaurants that make 75 percent of their gross income from food sales.

Waterman said the bill would allow an estimated 154 more restaurants to serve beer and wine with meals. SB354 would restrict the sale of alcohol between 11 p.m. and 11 a.m.

Restaurants receiving the new licenses would be prohibited from having gambling and the state would issue permits by a quota system based on population.

Sen. Barry "Spook" Stang, D-St. Regis, cast the only no vote, saying not allowing restaurants to have gambling with their licenses would hinder tourism in western Montana.

"If you're going to tie the hands of the people in that area I can't support this bill," he said.

Mark Staples of the Montana Tavern Owners Association recognized Stang's concern, but said prohibiting gambling

was the compromise his clients would support.

Staples originally opposed the bill because the new category of beer and wine licenses would deflate the value of the older more expensive licenses.

Currently beer and wine licenses cost \$800. But because only a limited number are issued, they are often sold for much more. Restaurant owners sometimes pay the additional costs by installing

gambling machines.

All-beverage licenses, also under a quota system, sell for as much as \$300,000 in larger cities.

IF SB354 IS SIGNED into law, the new beer and wine licenses would cost restaurants with a seating capacity of 60 people or less \$5,000. Establishments seating 100 people would cost \$10,000 and \$20,000 for places that hold more than 101 people.

Some committee members balked at creating a quota system to determine how many new licenses the state could issue in a particular area.

Sen. Mike Foster, R-Townsend, said quotas are "ludicrous in a free market system" but supported Waterman and Staples' compromise.

AN AREA WITH A population less than 20,000 could issue 60 percent of the number of beer and wine licenses allowable in that district. For example, Deer Lodge has a population of 3,502. Currently, six beer and wine licenses are available. If SB354 is passed, 4 more eligible Deer Lodge restaurants could obtain licenses.

Areas with a population of 60,000 or less can issue 50 percent more licenses while areas with more than 60,000 people can increase permit numbers by 40 percent.

For example, Billings with a population of 58,000 would receive an additional 19 licenses.

Committee members praised both restaurant and tavern owners taverns for reaching a workable compromise.

"This is not a love-hate relationship," Sen. William Glaser, R-Shepherd, said. "This is a hate-hate relationship, but they finally found some things to agree on."

Measure would allow more licenses per city

If lawmakers pass Senate Bill 354, by Sen. Mignon Waterman, D-Helena, about 154 more Montana restaurants could purchase beer and wine licenses. Numbers are based on estimated by Waterman.

TOWN	CURRENT	NEW
Gardiner	6	4
Butte	29	18
Great Falls	33	17
Billings	47	19
Laurel	7	4
Missoula	28	13
Helena	17	9
Bozeman	16	8
West Yellowstone	1	4
Kalispell	10	6
Whitefish	6	6
C. Falls	6	4
Lewistown	7	4
Red Lodge	4	2
Harve	9	5
Hamilton	6	4
Miles City	8	5
Poison	6	4
Dillon	6	4
Shelby	4	2
Ennis	1	1
Virginia City	1	1
Deer Lodge	6	4
Anaconda	8	5
Livingston	7	4
Superior	1	1
Libby	4	2

**This is a
hate-hate
relation-
ship.**



HOUSE STANDING COMMITTEE REPORT

April 3, 1997

Page 1 of 1

Mr. Speaker: We, the committee on Business and Labor report that House Bill 604 (first reading copy -- white) do pass as amended.

Signed: _____

Bruce Simon, Chair

And, that such amendments read:

1. Title, lines 4 through 7.
Following: "MONTANA;" on line 4
Strike: the remainder of line 4 through "PREMISES;" on line 7
2. Title, lines 8 through 10.
Following: "PROPERTY;" on line 8
Strike: the remainder of line 8 through "PREMISES;" on line 10
3. Title, line 12.
Strike: "16-3-213, 16-3-242, 16-4-101, 16-4-401,"
4. Page 1, line 16 through line 6 on page 2.
Strike: section 1 in its entirety
Renumber: subsequent sections
5. Page 3, line 11 through page 8, line 4.
Strike: sections 4 through 7 in their entirety
Renumber: subsequent sections
6. Page 9, lines 11 through 13.
Strike: section 9 in its entirety

-END-

Committee Vote:
Yes 18, No 1.

4/3

mp

701154SC.Hgd

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 4/2/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	✓		
Paul Sliter Vice Chairman	✓		
Bob Pavlovich, Vice Chairman	✓		
Joe Barnett	✓		
Rod Bitney	✓		
Sylvia Bookout	✓		
Charles Devaney	✓		
David Ewer	✓		
Kim Gillan	✓		
Billie Krenzler	✓		
Bob Lawson	✓		
Rod Marshall	✓		
Gay Ann Masolo	✓		
Wes Pröuse	✓		
Carolyn Squires	✓		
Jay Stovall	✓		
Cliff Trexler	✓		
Joe Tropila	✓		
Carley Tuss	✓		

COMMITTEE ABSENTEE BALLOT

Date: 4-2-97

I hereby authorize Rep. Paul Sliter

to cast my vote(s) as follows:

H.B. 615 - Yes

H.B. 604 - Yes - ~~Two~~ amendment - yes

S.B. 89 - Yes

Consensus Amendments - Yes

Representative

Jay Storrall

**HOUSE OF REPRESENTATIVES
VISITORS REGISTER**

SUB-COMMITTEE

DATE

BILL NO. 604 SPONSOR(S) Rep. Harper

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Tom Hopgood	Mt. Beer & Wine Wholesaler		✓
Gary Pearson	Mont. Malt & Barley Producer	X	
John Decker	Montana Beer Wholesaler		✓
TOM PETERSON - Mtn	Montana Malting LLP	X	
Dave Brown	Modern Food & Drink Machine Division, Inc.		✓
Steve Browning	Anheuser-Busch Cos.		✓
Neil K...			✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

SUB-COMMITTEE

DATE

BILL NO. 604

SPONSOR(S) HAI HARPER

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Robert Zuccari Helena	Zeka's Dist		X
Rich E Miller	GTA/Best Bet Casino		X
Dana Koon	MDOR	—	—
Brian C Clark	Fun Beverage Inc.		X
Trevor McDonald Helena	Sandy Mac's Dist		X
JIM MACDONALD ^{HELENA}	SANDY MAC'S DIST		X
LEANN Ellingson	TRIANGLE Dist INC.		X
Criste Lee	LEE Dist		X
DON Brocopp	INTERMOUNTAIN Dist		X
Chuck Lee	Lee Dist.		X
Tim O'Leary 53656 Mission	Kettle House U-Brew	X	
Bob Stephens	Mt. Grain Growers	X	X
James Hummelberg	HIMMELBERGER BREWING CO	X	
Boss H. Fitzgerald	Mt Grain Growers Ass'n	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on April 10, 1997, at
9:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 604; 4/7/97
Executive Action: HB 604

{Tape: 1; Side: A; Approx. Time Count: 9:01 AM; Comments: N/A.}

HEARING ON HB 604

Sponsor: REP. HAL HARPER, HD 52, HELENA

Proponents: REP. SAM ROSE, HD 87, CHOTEAU
REP. CARLEY TUSS, HD 46, BLACK EAGLE
Bob Stephens, MT Grain Growers Assoc.
Todd Murphy, Helena
Mark Staples, MT Taverns Association
Tom Hopgood, MT Beer & Wine Association
Kelly Cogley, Anheuser-Busch Co.
Todd Daniels, Kessler Brewing Co.
Dave Brown, MT Independent Machine Operators
Assoc.
REP. BOB PAVLOVICH, HD 37, BUTTE
Brian Clark, Fun Beverage, Inc.

Opponents: None

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, HELENA. HB 604, as originally drafted and worked on by a number of people including the MT Grain Growers Assoc., is attempting to add value to Montana raw products. After attending a Grain Growers Association Meeting, and asking who in the group was interested in malting barley, I was introduced to a gentleman, named Gary Pierson, who was not able to make it down here today. When I first met him he showed me a project that a consulting group had been working on to try and establish a malting barley facility in the State of Montana. Malting barley is a product that every brewer needs to make their beer. Although we grow some of the best barley in the world, we don't have a malting barley facility. So every brewer in Montana has to buy his malting barley out of state. We wanted to get a facility here in Montana and thus add value to Montana grain. Along with this project, he had a survey to see if the local demand was there so that this malt house could get a toe hold. Once they get going they figure they can find a notch and provide Montana malting barley to breweries all over the state.

The bill in it's original form did a number of things. In order to legalize brewpubs in the state we are trying to bring our laws in line with the laws of 48 other states. We want to legalize the brewpubs and give them the right to sell their own beer. Montana and Mississippi do not allow this. Mississippi's last vote failed by a single vote. Although there won't be nearly the number of brewers here to express intense interest in this bill, there are a number of reasons. Those people feel the frustration that they are not able to take their product from the raw grain product all the way through and sell it to the consumer. In 48 states they can do this. This bill, in order to allow that had to change a number of sections of law that were written in 1933 as prohibition was repealed.

As you can see, almost all of those things have been stricken out of the bill. This bill was introduced three weeks before it was heard in the House committee but it was heard on the final day. There was not enough time for the committee to even meet and consider the bill. They had to come back to it. They accepted amendments that stripped out all parts of the bill except the part that legalized home brewing and the portion of the bill that gives a tax break to malting barley facilities. It is the same tax break we gave to the canola facilities, though they never located here. It is a 2% tax break. It moves malting barley facilities from a Class A property tax at 6% to a 4% rate.

If the committee wishes to do nothing else with the bill, my request would be that those provisions proceed. We want these people to have a chance to get started on a malting barley facility.

I would like to pass out to the committee a copy of the MCA as it relates to wineries (**EXHIBIT 1**). What this bill had originally asked for is exactly what the Legislature has allowed the wineries. A winery can sell its product.. Under current law, it allows first a brewery to give away its own product for on-premise consumption but not to sell it. Secondly, the Code allows a brewery to self-distribute its product if they desire. My bill is not traveling any new ground. Also, in the original bill, it stated that a holder of an all beverage liquor license who did not have a gambling endorsement could also have a brewery. We thought that since everyone is lamenting the fact the only way a liquor licensee can preserve the value of their license is to have gambling, and many people don't want that, we thought this would be a good way to preserve that value.

There are many people here to testify for this bill. There is general agreement on the two provisions of the bill that still remain. But people are coming from different points of view. Some people are afraid to testify because of repercussions one way or the other. I would like to submit a letter (**EXHIBIT 2**) from a gentleman, Thomas Kerns, of Portland, Oregon. He would like to come here and establish a brewery, but he can't because of the laws as they now stand. We have for years struggled in the Legislature to try to find ways to add manufacturing jobs in Montana. These are manufacturing jobs. This is a way that we can help Montanans use the products of Montana. Right now, we are being prevented from doing this by a 1933 set of laws. It is time to make a change.

Proponents' Testimony:

REP. SAM ROSE, HD 87, CHOTEAU. I would like to pass out two letters (**EXHIBIT 3 AND EXHIBIT 4**). This first is from the City of Choteau and they have been working toward locating a manufacturing plant in Teton County. The city has offered land to them. The second letter is from our county commissioners.

This bill came in late, so the malting plant is included with that particular bill. This has generated a great deal of interest, not only in our community but also in the economic development of Montana. Because it is a value added product, it gives our agricultural people another dimension for marketing a special crop. The special crop we are talking about is malt barley. We have the right conditions to grow this type of barley. I represent over 80,000 acres of irrigated ground. Plus, the farmers in the triangle area can also grow this on dry land. We have a good resource for this particular plant. Some of our malting barley comes out of Canada and some even out of England for the specialty brews. Here we are sitting in an area where this crop can grow and we are not utilizing it but shipping it out of state. It will be a win-win situation. We figure at the maximum we would use 750,000 bushels of barley. This is probably 2% of the barley grown in our area. So we are not placing anyone in jeopardy. Our business plan has already been

established and we do have outlets in the western portion of the U. S. Thank you for your time.

REP. CARLEY TUSS, HD 46, BLACK EAGLE. I stand in support of this bill and would only echo what **REP. ROSE** has said in terms of economic development. The golden triangle is rich. Last fall, the Agriculture Dept. had a conference in Great Falls including Canada and surrounding states. One of the thoughts I took away was how important value added industry is. And when we speak of the malting barley facility we are talking about value added. It benefits not only Teton County but its neighbor to the south, Cascade County.

I am the one who carved the bill up. I did that because it was evident that our committee had no appetite for engaging in more discussions of yet another kind of liquor license for brewpubs. The committee would only support this bill as it stands. I would ask you to resist any amendments that would reinsert brewpub type language. Thank you.

Bob Stephens, MT Grain Growers Assoc., the MT Barley Growers Assoc. and the MT Natural Barley Growers Assoc. We support this bill because it is another market for barley. About half of the barley grown in Montana is malting barley. About 20% is sold for malting barley. We raise approximately 60 to 65 million bushels a year. Eighty percent is sent out of state. A lot of this barley is shipped to Butte. We urge your support for this bill and thank you for your consideration.

Todd Murphy, Helena. I would like you to support this measure as written; however, I have been up here before. We tried to do some of the same things in 1995. I doubt that the bill would have passed as originally written, so I would like to offer one amendment (**EXHIBIT 5**). He then read through the sheet.

Mark Staples, MT Taverns Association. We certainly support the malting plant component of this bill. And we certainly support the home brewing component. We have not heard of one small brewery in Montana that is not selling every ounce of product they make. One of the main reasons for that is the support they receive from the bars and taverns in Montana to place and sell their product. It doesn't seem to be, in our mind, a driving need for added revenue in their places when they are selling every ounce they produce. We have micro-breweries and brewpubs in Montana and they are thriving. It is a bit of structuring when they create these brewpubs as they now stand. They put an existing licensee with the brewpub person. Often they are members of the same family, with one person holding the on-premise consumption license. Some people feel that we will eventually evolve away from that kind of convoluted setup.

I am not so sure that with brewpubs doing so well right now that we need to change the law. We were asked in the House Committee to support the bill as amended. Historically, we did support the

position that if you have a present license, you ought to be able to brew on premises. On the other hand I also told them that I was not sure that the beer wholesalers would buy into this. It is not worth it to us at this point to get into a big fight about this. We do have one or two taverns in Montana that would like to brew their own rather than get into some configuration with someone else. I do believe that like the cabaret issue which is going to create 210 new beer and wine licenses in the state in the next year this would be an enormous change in the licensing field. This may well create quite a shakeup while getting everything smoothed out. I think that this may well be more than enough to assimilate this session and further changes at this time may be just too much. Maybe brewpubs can be next. Thanks.

{Tape: 1; Side: A; Approx. Time Count: 9:31 AM; Comments: N/A.}

Tom Hopgood, MT Beer & Wine Association. We are in support of HB 604 as it now stands. We would not be in support of any amendments that would be offered at this time. I will give my testimony (EXHIBIT 6) and hand in the written copy. Thank you.

Kelly Cogley, Anheuser-Busch Co. We support the bill as it is now written. Thank you.

Todd Daniels, Kessler Brewing Co. We are in favor of HB 604. First, I would like to say that this bill as it exists today is something that everyone here is in favor of. As a Montana manufacturer, I seek out Montana made products. I know that from my conversations with other Montana breweries this bill to allow the malting barley facilities in Montana would be something those breweries would seek out as well. On the issue of home brewing, I am in agreement with that as well.

I would like to make a statement for the record rather than ask to change things at this point in time. The Kessler Brewing Company is run by my partner, Mike James, myself and one other person. We are a small Montana manufacturer. As Mr. Staples alluded to, we do sell every ounce of beer that we make. We also don't brew more than we can sell. I am disappointed in the fact that this bill did not go through in its original form, because it would have been an opportunity for marketing our product on a local level while allowing us to grow. Looking at the profiles of Montana breweries, we are brewing less than 5% of all the beer that is sold in Montana. So we are a very small community that is trying to grow.

I won't get into any of the reasons why there are large breweries here opposing any amendments to the bill, but I think that you all should look at the reasons. I am pleased that in the last few days we have had good conversations between the breweries in Montana and as a brewer I feel that I have a good pulse of the brewing industry. As a group, the breweries in Montana are in favor of brewpub legislation.

{Tape: 1; Side: B; Approx. Time Count: 9:48 AM; Comments: LOST ONE SENTENCE OF MR. DANIELS TESTIMONY.}

As a matter of record, I would like to thank Tom Hopgood and the Montana Wholesalers for coming forth and stating that they are willing to work with the breweries in the next couple of years on such legislation. I would also like to thank REP. HARPER for all his hard work on this bill. Thank you.

Dave Brown, MT Independent Machine Operators Assoc. This may seem a strange place for me to appear, but with 5,000 machines that my folks vend across Montana ties us very closely to what those folks do that primarily belong to Mr. Staple's association. They hear from their customers on a regular basis about their desires, etc. In this case, we solidly support the bill as it came out of the House. Thank you.

REP. BOB PAVLOVICH, HD 37, BUTTE. I stand as a proponent of the bill as it sits. If there are any amendments put in the bill, I would stand as an opponent. I own a tavern and have for 45 years and we sell micro beers. We have the micro breweries on the original bill that want to come in and be a competitor of mine. If that would happen, I could look forward to seeing the major breweries come in, build a nice tavern alongside mine, open up a microbrewery and then I would have more competition. I think we do a fair job; I believe in the three tier system; let them go through a wholesaler and we'll sell their beer. If they want to get into opposition with me, then I think I should take their beer out of my establishment and all the tavern owners of Montana should take all the micro beers out of their establishment and let them sell their own micro beer. We are selling it for them now and we are doing a good job. We ought to leave it alone. If it is good in 48 other states, I think we ought to look and see what they are doing. Maybe we can come up with a good consensus over the next two years.

Brian Clark, Fun Beverage, Inc. We answer the phone: This is Fun. I am here today requesting your support for HB 604 as it stands before you. I did not support the original bill as it impacted every tier: brewers, wholesalers and retailers. We do have brewpubs in the state today and 17% of my business is derived from craft beers. This is a high percentage across the nation. Of that 17%, 50% comes from Montana breweries. I do believe the brewpubs can have a place in the three tier system. But nothing should be done to destroy the three tier system. Thank you.

{Tape: 1; Side: B; Approx. Time Count: 9:54 AM; Comments: N/A.}

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. CASEY EMERSON asked if a malting barley facility was possible now under current law? REP. HARPER said yes, it was. This bill will give these facilities a tax break of 2%.

SEN. STEVE BENEDICT asked if it was his intention to by-pass the distributors with this amendment? In other words, if you had a beer and wine license or an all beverage license, would you see the breweries being able to by-pass the distributor and just sell directly to themselves. And can they do that today? Mr. Murphy said yes, that was his intention, and yes they can do that today anyway.

SEN. BENEDICT asked what is the difference between a winery being able to sell their product through their own company as opposed to a brewpub? Mr. Hopgood replied that the wine market is a more confined market. It is not as widely consumed as beer. The other point is there are many differences in the way the wine industry is regulated and the way beer is regulated. This is a complicated and subtle system for the distribution of beer. And this may be something that needs to be addressed to equalize this situation.

SEN. BENEDICT said that the consumption may be less, but he couldn't see much of a difference in where it is placed. He sees wine in grocery stores, bars, restaurants, etc. Less consumption doesn't speak to the question as to why to treat them differently. Mr. Hopgood referred the question to Mr. Clark. Mr. Clark responded that he represented the winery that has the opportunity to do so. Brewpubs and wine pubs are not the same animal at all. The laws concerning both are regulated differently, taxed differently, etc. There is not a proliferation of wine pubs springing up. Mission Mountain Winery is located in Dayton, MT. They are located there because that is where the process is and they are near their raw product. (He was interrupted at this point, because he did not seem to be answering the question.)

SEN. BENEDICT asked if any amendments had been offered on the House Floor so that the bill could be put back in its original form? REP. HARPER said that he had not offered any. SEN. BENEDICT said that REP. HARPER had mentioned some potential brewers in the state would be hesitant to testify here. Could he tell the committee what kind of pressure could be put upon these people? REP. HARPER said that there is a difference between the laws that relate to beer and wine distributors. He don't know if the committee had examined the kind of contract that a brewer must sign with a distributor. He had copied sections of the law and would like to hand them out (EXHIBIT 7). It is curious to understand exactly how these laws operate. The section he asked the committee to look at is 16-3-222. Clearly, a distributor or taverns for that matter are in a position of determining whether or not they want to carry the product. But also, if you look at

this particular provision, you will see that even after a contract is signed with a distributor, the distributor can decide how much effort they want to put into moving that product. **SEN. BENEDICT** asked could there be repercussions for the brewer that the distributors could freeze them out of the market around the state by not distributing the products. **REP. HARPER** said that he knew of no such threats that have been made in context with this bill, absent the one that **REP. PAVLOVICH** made which really wasn't a threat, but he just mentioned that, hey, we could quit handling this kind of thing. Certainly that kind of fear is there. He wanted the committee to have this code just so the committee could understand that when the brewer signs a contract with a distributor, the copy of that contract is filed with the Dept. of Revenue. The contract states that the distributor is free to manage the product or not manage the product as he sees fit. In Subsection 3, if there is a perceived deficiency from the brewer with that distributor, that distributor cannot be fired. He has to be given a 60 notice, the deficiencies must be detailed in writing what the brewer has perceived and give them a chance to correct it. In effect, these two are married and it is not easy to get a divorce.

SEN. BENEDICT stated that he had been looking at this bill for the last couple of days and his free enterprise background has led him to ask the Legislative Services Division to prepare some amendments to put this bill back in its original form. He, after hearing all the testimony, is hesitant to offer the amendments. He further stated that **Mr. Daniels** did not come to the podium with fire in his eyes saying put it back the way it was originally. He said that there might be some compromises that could be worked out in the next two years. So the question is: would you like the amendments offered during executive action or leave it alone and let you all work through that process? **Mr. Daniels** replied that he was approaching the committee wearing two hats. He is the point of contact for the breweries in Montana because after the House bill was introduced, he was the point of contact because he lives here in Helena. But as Kessler Brewing Company, he believes that it is something that would help them market their product. It is not something they are going to pursue immediately. As a group of Montana breweries, the majority of them are in favor of brewpub legislation. And as a majority and with the response of the Montana wholesalers, they are willing to work with the wholesalers to present a bill that does not jeopardize Montana breweries. There is a fear for Montana breweries. It is not a majority fear, but it is a fear. For me, I use wholesalers. I am up here extending my nose to be chopped off for representing us and the situation. **SEN. BENEDICT** said that the short answer to his question is not to offer the amendments at this time. **Mr. Daniels** said yes.

SEN. WILLIAM CRISMORE asked about the amendment that **Mr. Murphy** offered. He has heard that the state doesn't really need the amendment because there are already brewpubs operating. Is this true? **Mr. Staples** responded that what the amendment is proposing

is that present license holders be allowed to make the investment and bring in the facilities, brew beer on their own premises for sale on their own premises and sell for distribution elsewhere. What is being done currently by current license holders is this. One partner owns the actual on-premise facility with current license. Another partner parks the brewery right next to it and has a see-through glass window which for purposes of law separate the two but most people use that see-through glass to make sure that their brewing is not contaminated anyway. And then they load the beer over from the one into the other and out the taps. That is how brewpubs are configured now. **Mr. Murphy's** amendment would take out what some feel is the extra step of having to have two separate legal entities and allow it to be one single legal entity. I would like to say one thing. Why does this issue get so confusing? The wholesalers are not concerned about the wineries because the wineries are selling their own wine. The wholesalers aren't concerned about a brewpub bill if the brewpub can sell all beers. That doesn't bother the three tier system. Their concern is when the brewpub only sells their own because they say, why should we allow these new places to come into being and do something we do when they are not going to traffic with us. And where the gnarl comes in is when they add that component. The wholesalers are offering to work with the brewpubs for the next session on a bill that would allow the brewpubs to sell all product which in our estimation turns them into a bar. Now if that is the thing, we'll reverse our position right here and support the legislation that **REP. HARPER** first introduced. That gores our ox the least but it gores the beer wholesaler's ox the most. So in looking at the whole picture, that is where the gnarl comes in.

SEN. BENEDICT asked if **Mr. Staples** would like him to offer his amendments in executive action? **Mr. Staples** answered, not at this time, but if he were told that the would-be brewpubbers and the wholesalers are thinking about creating brewpubs that sell all beer products with no money down in a new license, then he would suggest that be done.

SEN. BENEDICT asked **Mr. Hopgood** if he would like to make a statement. **Mr. Hopgood** replied that he would like to add that the discussions that have been heard this morning have brought the exact problem to the fore. For the record, his association would not enter into negotiations unless the taverns association, represented by **Mr. Staples**, would be at the table and all three groups would have to reach a consensus. Thank you.

Closing by Sponsor:

REP. HARPER closed. The point has been made that any brewer that knows their business needs to use the professionals to wholesale the product. I am very hopeful that negotiations can proceed and want to thank all parties here this morning who have offered to do just that. I would certainly like to be involved as well. Right now there are five different establishments that have

accomplished this, but there is separation. There are two licenses and two owners and that is what they would like to change. The longer the Legislature waits to modernize these laws the longer we are going to have convoluted types of ownerships. So I look forward to meeting and discussing and negotiating these issues because I believe that an agreement can be reached. For a brewery to be able to sell their own product is a right that should not be denied. One last note is that the winery provision was made law in 1987. That is modernization. The crux of the matter on this is if the distributors could sell all their products to these brewpubs, they would be happy but then we would have bars. In my mind, the win-win is that a brewpub that serves only its own beer will not compete with the bars and taverns. But that will allow them to have the grubstake and grow to be a big enough brewery so that they can move their product. Then they will need the services of the wholesalers. I look forward to working on this. Thank you for your time and attention.

{Tape: 1; Side: B; Approx. Time Count: 10:26 AM; Comments: A 5 MINUTE BREAK WAS TAKEN.}

EXECUTIVE ACTION ON HB 604

Motion/Vote: SEN. WILLIAM CRISMORE MOVED HB 604 BE CONCURRED IN.
THE MOTION CARRIED UNANIMOUSLY: 6-0

16-3-411

ALCOHOL AND TOBACCO

DATE 576

BILL NO.

(b) such winery or table wine distributor is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from or to the other; or

(c) such table wine distributor extends more than 7 days' credit to a retail licensee or furnishes to any retail licensee any furniture, fixtures, or equipment to be used in the dispensation or sale of table wine; or

(d) any retailer holds an interest as a stockholder, or otherwise, in the business of the table wine distributor.

History: En. Sec. 8, I.M. No. 81, app. Nov. 7, 1978.

16-3-407 through 16-3-410 reserved.

16-3-411. Domestic winery. A winery located in Montana and registered pursuant to 16-4-107 may:

(1) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;

(2) sell wine it produces at wholesale to wine distributors;

(3) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;

(4) provide, without charge, wine it produces for consumption at the winery;

(5) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces; or

(6) obtain a special event permit under 16-4-301.

History: En. Sec. 1, Ch. 566, L. 1987; amd. Sec. 34, Ch. 530, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 530 in (2), after "wholesale", deleted "to the department or". Amendment effective April 25, 1995.

16-3-412 through 16-3-414 reserved.

16-3-415. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agreement of distributorship" means a contract, agreement, commercial relationship, license, or other arrangement for a definite or an indefinite period of time between a supplier and a table wine distributor that provides for the sale of table wine by the supplier to the table wine distributor.

(2) "Good cause" means failure by a table wine distributor to comply with reasonable business requirements imposed, or sought to be imposed, by a supplier under the terms of an agreement of distributorship if the requirements are imposed on other similarly situated distributors either by the terms of their agreements or in the manner of their enforcement by the supplier.

(3) "Person" means a natural person, corporation, partnership, trust, agency, or other entity and includes individual officers, directors, or other persons in active control of the activities of the entity.

(4) "Supplier" means a winery or an importer of table wines that enters into or is a party to an agreement of distributorship with a table wine distributor.

History: En. Sec. 1, Ch. 314, L. 1991.

16-3-416. Table wine distributor provisions. (1) A supplier or table wine distributor must have a written agreement of distributorship that pro-

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SENATE BUSINESS & INDUSTRYEXHIBIT NO. 2DATE 4-10-99BILL NO. H.B. 604

To the Montana State Legislature:

I am Thomas D. Kerns of Portland, Oregon. I am a brewer and consultant in the growing craft-brewing industry. I am currently in the midst of developing a business in Montana. Specifically I am developing a brewpub-restaurant in the ski resort of Big Sky Montana. Financing, planning, and design are all but completed but there remains one problem: brewpubs are still illegal in Montana.

Montana is now just one state of two (the other being Mississippi) where a manufacturer of beer cannot sell its product on premises as retail sales. This limitation is supported as protectionism by the Montana Tavern Association's lobbyist organization. They see this as a threat to their own livelihood. I see it as an opportunity for myself and other taverns or bars to offer a various and wider range of beverages and atmosphere. Brewpubs have been part of western culture since the early 16th century. Prohibition eliminated them in the 1920's. Conservative Neo-Prohibition ideals kept this illegal in the US until the 1980's. Since then most states across the country began to sweep away antique ideas and prohibitive laws governing beer brewing and its dispensation. What brewpubs offer is a friendly community gathering place focusing on hand-crafted all natural beers created by a member of the given community, mixed with a wide range of food offerings from pub foods to fine cuisine. These places of business offer dining and craft beer enjoyment to families as well as individuals. They are generally not your typical tavern or bar drinking atmosphere. I strongly support allowance of people like myself to do this kind of business in Montana communities. This would be no threat to those the MTA represent, their fears are unfounded. Our type of business offers a positive multidimensional community eatery and beer-house of distinctive character. Furthermore our products could also be sold wholesale through distributors to help support and add to the selections of beers taverns and bars can provide. John Kircher, the owner and General manager of Big Sky Resort is very supportive of my goals to add to the experiences his guests receive. He can be reached for comment at: 406-580-4211, 406-995-4211.

I have included a copy of the Oregon State Liqueur laws that govern these types of businesses. I encourage you all to look at these as they are a standard reflection of how other states are allowing free enterprise to exist in the beer industry without unnecessary protectionism. I strongly support the simplification and the legislation necessary to allow me and others to do business within Montana and its established communities.

Thank you very much for your time and concerted considerations.


Sincerely, Thomas D. Kerns
6427 NE 26th Avenue
Portland, Oregon, 97211
(503) 288-4740

CITY OF CHOTEAU

38 FIRST AVE. N.W.
P.O. DRAWER X
CHOTEAU, MONTANA 59422

OFFICE OF CITY SUPERINTENDENT
DIRECTOR OF CITY OPERATIONS

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 4-10-97

BILL NO. H B 604

February 19, 1997

To: Representative Sam Rose
Senator Gary Aklestad

Contact Person:

City of Choteau-Jim Christiaens 466-2510
Teton County Development Corporation-Jay Dunckel 466-5772

Re: Montana Malting Company

Gentlemen,

The City of Choteau and the Teton County Development Corporation have been working with the principals of Montana Malting Company the past several months about the possibility of locating a manufacturing plant in Teton County.

This enterprise would add value to an agricultural product and be marketed interstate bringing money into Montana from out of state.

It would also generate approximately 7 jobs and add to the declining tax base in Teton County.

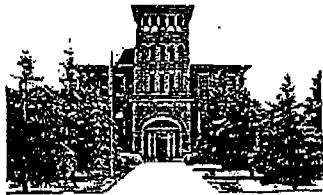
The City of Choteau has agreed in principle to make land available to locate this plant, on a long term lease basis, through the Teton County Development Company at a nominal lease rate.

If the legislature should agree to fund some seed money to further pursue this project we feel it should be channeled through the Teton County Development Company to allow for some measure of accountability of the project funds.

Sincerely,


Roger A. Kelly
Mayor

**TETON
COUNTY**



BOARD OF COUNTY COMMISSIONERS

PO. BOX 610

CHOTEAU, MONTANA 59422

OFFICE (406) 466-2151

FAX (406) 466-2138

**R. F. SAM CARLSON
DISTRICT #1, FAIRFIELD**

**C. ALBERT CARLSON
DISTRICT #2, CHOTEAU**

**ADAM F. DAHLMAN
DISTRICT #3, DUTTON**

February 20, 1997

Honorable Sam Rose
1051 Breckenridge
Helena, MT. 59620

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 4-10-97

BILL NO. HB 604

Dear Sam:

SUBJECT: TETON COUNTY DEVELOPMENT CORP. & MT. MALTING PROJECT

The Teton County Commissioners have met with the principals of the Montana Malting Company during the past week about the possibility of locating a processing plant in Teton County.

We strongly support anything that would benefit the county and community. This project would generate a certain amount of employment and add revenue to the county in the form of taxes.

We would lend our support and consideration to the Teton County Development Corporation and Montana Malting Project. We feel it would benefit our community in a very positive way.

Sincerely,

TETON COUNTY COMMISSIONERS


Adam F. Dahlman, Chairman

Unavailable for Signature

C. Albert Carlson, Vice-Chairman


R. F. "Sam" Carlson, Member

HB604 Amendment: Legalize Brewpubs in MontanaDATE 4-10-97BILL NO. HB 604

"LEGALIZE BREWPUBS IN MONTANA by allowing an entrepreneur to own both a brewery and a beer & wine or all beverage license to sell hand-crafted beer to patrons for on-premise consumption."

DEFINITIONS:

Pub/Tavern/Bar: business which serves beer, wine, and possibly liquor for on-premise consumption.

Micro-brewery: a brewery which brews less than 15,000 barrels of beer each year.

Pub-brewery: a small micro-brewery for brewing beer for consumption on premise.

Brewpub: the combination of a pub and pub-brewery, usually accompanied by a restaurant.

FACTS:

- MONTANA IS ONE OF ONLY TWO STATES WHERE BREWPUBS ARE NOT ALLOWED IN SOME FASHION OR ANOTHER - per Jim Parker - American Organization of Brewers, Boulder, CO.
- Montana breweries can give away their beer for consumption on premise - today!
- Montana breweries can sell their beer for consumption off premise - today!
- Montana breweries can distribute their own products to taverns (without distributors) - today!
- Montana breweries can integrate vertically with respect to all industries except bars/pubs... they can buy barley farms, malting plants, hops growers, and even wholesalers, but they cannot buy a pub.
- A winery in Montana can sell wine for consumption on premise without a beer/wine license - today.

The Montana Tavern Association is not in opposition to this amendment the way it is proposed!

What about the Beer and Wine Wholesalers? Do they have anything to lose?

- Their business of distributing micro brews? No! - I know of no existing micro-brewery that is currently distributing their own beer, even though it is legal.
- Their business of selling beer to "brewpub" pubs? No! - I know of no existing "brewpub" which sells only their beer. They will always have a diverse selection of beverages on hand for all patrons.

Just what is the bottom line?

Everyone benefits from this amendment, including the beer distributors, but especially the patron. Even the beer distributors should gain from increased sales to these establishments and very possibly new contracts to distribute any excess beer for these establishments. Montana's pristine water and golden barley fields are two of the main ingredients used to create a product to sell outside of this state - let's promote it.

If we do not pass this bill with this amendment, it is only a short matter of time before Montana is the only state which does not allow brewpubs.

D. Todd Murphy

HB 604

**MONTANA BEER & WINE WHOLESALERS ASSOCIATION
STATEMENT IN OPPOSITION
TOM K. HOPGOOD, EXECUTIVE SECRETARY**

The Montana Beer & Wine Wholesalers Association (MBWWA) is a trade association consisting of every beer wholesaler in the state of Montana. Our members do business in every county, every city, and every town in this state. All of our members are small businesses. Most employ less than 20 people.

The vast majority of beer distributors nationally and in Montana are family-owned businesses. Most have been in the same family for at least two generations. To name a few:

Lee Distributing, Kalispell
Devine Brothers, Great Falls
Intermountain, Billings
Briggs Distributing, Billings
Earl's Distributing, Missoula
Sandy Mac's Distributing, Helena
Clausen Distributing, Helena

MBWWA members directly employ 700 persons as salesmen, drivers, dock workers, bookkeepers and secretaries. We account for an additional 1,400 jobs when the so-called "ripple" effect is taken into consideration. MBWWA members pay state and federal beer excise taxes in the amount of \$16,720,000.00, \$3,250,000.00 of which is the state's share. Wholesalers also pay property, motor vehicle, payroll, and workers' compensation taxes.

The MBWWA is unanimously and strenuously opposed to HB 604.

The first reason the MBWWA is opposed to the bill is historical. A whole library has been written about how we got to where we are today in the regulation of alcoholic beverages. When you study the literature, a phrase which crops up with some

regularity is "tied house." The phrase describes the common pre-prohibition distribution scheme where the breweries owned or controlled the saloons. The phrase "lock, stock and barrel" derives from this period as the brewers owned the taverns "lock, stock and barrel."

It was common for the brewer, if it did not own the tavern outright, to sell beer on extended credit, furnish equipment and supplies, charge little or no interest and to pay rebates (or kickbacks) for pushing their product or carrying it exclusively. Competition for control of retail outlets was fierce and tremendous pressure was exerted on retailers to maximize sales without regard to the well being of customers or the general public. Excise tax evasion was the rule rather than the exception.

These are the conditions which led the nation into prohibition where the sale or even possession of alcohol was made illegal by federal law.

When the 21st Amendment was ratified in 1933, ending the national dry spell, federal and state lawmakers resolved to abandon the old distribution system for beer, wine, and spirits. Thus, a three-tier system was born to eliminate the direct link between brewers and retailers which caused so many of the pre-prohibition problems. The new system has four primary goals:

A. To avoid the overly aggressive marketing and sales practices of the pre-prohibition era;

B. To generate revenues that can be collected from the industry efficiently;

C. To facilitate state and local control of licensed beverage products; and

D. To encourage moderate consumption.

The common thread and hallmark of our three-tier system is the complete separation of the retailer from the manufacturer. As a matter of policy, all our laws and regulations are based on maintaining the total independence of the retailer. It is prohibited for a manufacturer to set retail prices; neither can a manufacturer set quotas or loan money to retailers. We believe the policy reasons for the separation are sound.

HB 604 would tear the separation down. Manufacturers would be retailers and all the laws, rules, and regulations prohibiting the "tied house" would be thrown out the window.

For this reason, we oppose HB 604.

The second reason the MBWWA opposes HB 604 is that it devalues existing on-premises licenses. When you scrape the rhetoric away, this bill establishes a special on-premises beer license for \$500. As you know, on-premises licenses are under the quota system. Only so many are allowed for each locality computed on the basis of population. These licenses are valuable, selling for \$150,000 to \$350,000 per license, depending on the local market. We have heard of one going for over \$400,000. When you look underneath HB 604, all it does is allow a person to pay \$500 and do what other people have paid 30, 60, or 80 times as much for. We believe this is blatantly unfair.

The third reason the MBWWA opposes HB 604 is that this legislature is well on its way to passing Senator Waterman's SB 354, the so-called cabaret license bill.

Although similar bills have been killed in the past, this session is different with a compromise being reached between the Montana Tavern Association and cabaret license supporters. The bill was recently endorsed by the Senate Tax Committee and is expected to clear the Senate.

SB 354 accomplishes the aim of this bill but within parameters which are acceptable to the MBWWA.

The bill would allow limited beer and wine licenses based on quota throughout the state.

Depending on capacity, the new licenses would cost \$5,000, \$10,000, or \$20,000. Granted this is more expensive than the \$500 brewers' endorsement contemplated by HB 604. But it is still nominal when compared with the market price. If HB 354 passes (and it looks like it will) one of the "special" cabaret licenses could be affiliated with a brewery and the enterprise could do everything contemplated by HB 604.

The fourth reason the MBWWA is opposed to this bill is that the state of Montana has gone far enough in giving special dispensation to small breweries. Under existing law, a small brewery is allowed to provide samples of its product at its premises and to sell product directly to consumers for off-premises consumption. Presently, small brewers are allowed to sell directly to other retailers. As such, the wholesale market is already wide open to small brewers.

At the same time the wholesale market is completely open to small brewers or brew pubs, HB 604 would completely close their market to wholesalers. Under the provisions of HB 604, brew pubs would be able to sell their own product and only their own product. From the wholesalers' viewpoint this is blatantly and manifestly unfair.

The fifth reason the MBWWA opposes HB 604 is that on-premises licensees can presently affiliate with small brewers. That has been done in a number of instances across the state. There is nothing which prohibits on-premises licensees from affiliating with a small brewer as long as there are two licenses. As mentioned earlier, it is at least conceivable that one of the licenses could be one of the special cabaret licenses which will be established under SB 354.

The sixth reason the MBWWA opposes this bill is that we have been extremely frustrated in working on this bill. We have stood, along with the Montana Tavern Association, ready, willing, and able to work toward a resolution of the complex issues which are involved in this bill and we have been offering to do so. To date, we have received no reply.

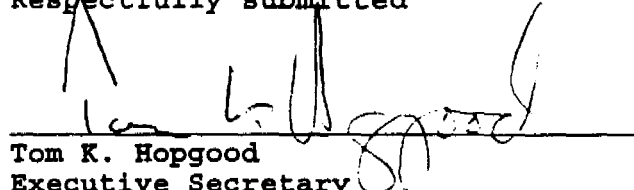
We do not know, to this day, who the parties are who are moving for this bill to be passed. We contacted the two best-known existing brew pubs in the state, Spanish Peaks in Bozeman, and Sleeping Giant in Helena. Both of these enterprises inform us that they are vehemently opposed to the bill. We did not check with any other existing brew pubs but would remind the

Committee that brew pubs existing in Billings and Missoula in 1995 opposed the same type of legislation.

We believe that the issues which exist in the brew pub bill, if not completely solved by the cabaret bill, can be resolved through careful discussions. However, introducing a bill of this significance in the last half of the legislative session does not allow adequate time to indulge in these discussions.

For all of the reasons stated, we would urge the Committee to quickly table this bill.

Respectfully submitted



Tom K. Hopgood
Executive Secretary
Montana Beer & Wine Wholesalers
Association

1995 Economic Contribution of the Beer Industry to

—The State of Montana —

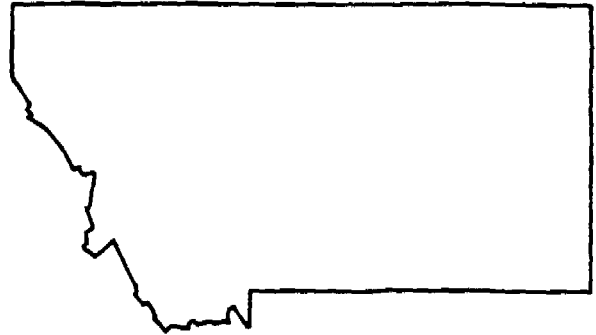
Beer Industry Overview

Excise Taxes Paid by Beer Industry

Federal	\$13,470,000
State	\$3,250,000
Total	\$16,720,000

Total Economic Impact

Jobs	17,730
Wages	\$257,920,000
Economic Contribution	\$875,000,000



Economic Details

Sales by Industry Tier	(\$000)	Establishment Type	Count
Brewers	\$5,240	Major Brewers	0
Wholesalers	\$113,550	Regional Brewers	0
Retailers	\$218,300	Microbreweries & Brewpubs	11
On Premise	\$117,800	Beer Whslr Facilities in State	42
Off Premise	\$100,500	Beer Whslrs Distributing in State	42
		On Premise Retailers	2,320
		Off Premise Retailers	920

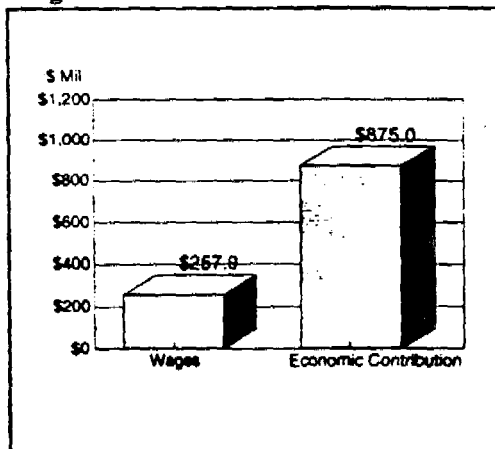
Impact of Beer Industry			
	Jobs	Wages	Econ. Contrib.
Brewers	3,960	\$77,310	\$320,250
Wholesalers	2,160	\$41,850	\$126,770
Retailers	11,610	\$138,760	\$427,980
Total	17,730	\$257,920	\$875,000

Fact: Each 10 jobs in the beer industry help create an additional 20 jobs in other industries.

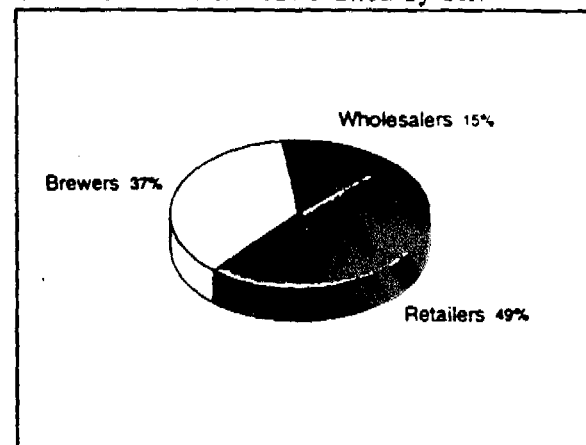
Source: Steve L. Barsby & Associates, Inc.

Total Impacts of Beer Industry in the State of Montana

Wages and Economic Contribution



Share of Economic Contribution by Tier



Session

The Independent Record

Panel OKs beer, wine bill

By ERICA CURLESS
IR State Bureau

A Senate panel Wednesday approved, by an 8-to-1 margin, a compromise bill that would create a new category of beer and wine licenses for Montana restaurants without gambling machines.

Senate Bill 354, by Sen. Mignon Waterman, D-Helena, caused heated debate two weeks ago between restaurant, tavern and casino owners. But the factions compromised and offered amendments Wednesday that secured the bill's passage through the Senate Taxation Committee.

RESTAURANT OWNERS without licenses complained that their customers want a glass of wine or beer with their meals, but they are unable to afford licenses under the current system. But bars and casinos with beer and wine or all beverage licenses said it would be unfair to offer many new licenses, which would devalue the ones they paid for.

Supporters of Waterman's bill had threatened to mount an initiative cam-

paign to pass the law if the Legislature killed as it has several times in recent sessions.

Under SB354, which goes to the Senate next, creates a new category of beer and wine licenses for restaurants that make 75 percent of their gross income from food sales.

Waterman said the bill would allow an estimated 154 more restaurants to serve beer and wine with meals. SB354 would restrict the sale of alcohol between 11 p.m. and 11 a.m.

Restaurants receiving the new licenses would be prohibited from having gambling and the state would issue permits by a quota system based on population.

Sen. Barry "Spook" Stang, D-St. Regis, cast the only no vote, saying not allowing restaurants to have gambling with their licenses would hinder tourism in western Montana.

"If you're going to tie the hands of the people in that area I can't support this bill," he said.

Mark Staples of the Montana Tavern Owners Association recognized Stang's concern, but said prohibiting gambling

was the compromise his clients would support.

Staples originally opposed the bill because the new category of beer and wine licenses would deflate the value of the older more expensive licenses.

**This is a
hate-hate
relation-
ship.'**

Currently beer and wine licenses cost \$800. But because only a limited number are issued, they are often sold for much more. Restaurant owners sometimes pay the additional costs by installing

gambling machines.

All-beverage licenses, also under a quota system, sell for as much as \$300,000 in larger cities.

IF SB354 IS SIGNED into law, the new beer and wine licenses would cost restaurants with a seating capacity of 60 people or less \$5,000. Establishments seating 100 people would cost \$10,000 and \$20,000 for places that hold more than 101 people.

Some committee members balked at creating a quota system to determine how many new licenses the state could issue in a particular area.

Sen. Mike Foster, R-Townsend, said quotas are "ludicrous in a free market system" but supported Waterman and Staples' compromise.

AN AREA WITH A population less than 20,000 could issue 60 percent of the number of beer and wine licenses allowable in that district. For example, Deer Lodge has a population of 3,502. Currently, six beer and wine licenses are available. If SB354 is passed, 4 more eligible Deer Lodge restaurants could obtain licenses.

Areas with a population of 60,000 or less can issue 50 percent more licenses while areas with more than 60,000 people can increase permit numbers by 40 percent.

For example, Billings with a population of 58,000 would receive an additional 19 licenses.

Committee members praised both restaurant and tavern owners taverns for reaching a workable compromise.

"This is not a love-hate relationship," Sen. William Glaser, R-Shepard, said. "This is a hate-hate relationship, but they finally found some things to agree on."

Measure would allow more licenses per city

If lawmakers pass Senate Bill 354, by Sen. Mignon Waterman, D-Helena, about 154 more Montana restaurants could purchase beer and wine licenses. Numbers are based on estimated by Waterman.

TOWN	CURRENT	NEW
Glendive	6	4
Butte	29	15
Great Falls	33	17
Billings	47	19
Laurel	7	4
Missoula	28	13
Helena	17	9
Bozeman	16	8
West Yellowstone	1	4
Kalispell	10	6
Whitefish	6	6
C. Falls	6	4
Lewistown	7	4
Red Lodge	4	2
Hevra	9	5
Hamilton	6	4
Miles City	8	5
Polson	6	4
Dillon	6	4
Shelby	4	2
Ennis	1	1
Virginia City	1	1
Deer Lodge	8	4
Anaconda	8	5
Livingston	7	4
Superior	1	1
Libby	4	2

16-3-222

ALCOHOL AND TOBACCO

564

(4) fix or maintain the price at which a wholesale distributor resells the brewer's or beer importer's products. Without limitation, it is a violation of this section if:

(a) after a wholesale distributor has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor for those products within 60 days; or

(b) after a wholesale distributor has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor in an amount proportionately larger than the amount that it raised the wholesale distributor's prices initially when compared to the resale price that it recommended to the wholesale distributor.

(5) cancel or terminate, except for just cause or in accordance with the current terms and standards established by the brewer or beer importer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or entered into after that date to sell beer manufactured by the brewer or imported by the beer importer. A brewer or beer importer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer or beer importer cancels or terminates a wholesaler's franchise, the brewer or beer importer has the burden of proving that the classification was reasonable and not arbitrary. After July 1, 1974, the provisions of 16-3-221 through 16-3-226 must be a part of any franchise, contract, agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer or beer importer doing business with the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer or beer importer.

History: En. 4-317.2 by Sec. 1, Ch. 322, L. 1974; Sec. 4-317.2, R.C.M. 1947; redes. 4-3-207 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-207; amd. Sec. 8, Ch. 19, L. 1985; amd. Sec. 1, Ch. 409, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 409 inserted (4) making it unlawful for a brewer or beer importer or its officer, agent, or representative to fix or maintain the price at which a wholesale distributor resells and specifically making it a violation for a brewer or importer, after the distributor has exceeded a resale price increase

recommended by the brewer or importer, to raise the price charged the distributor within 60 days or to raise the price charged the distributor in an amount proportionately larger than the amount that it raised the distributor's prices initially when compared to the resale price that it recommended to the distributor; and made minor changes in style.

16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises. All contracts, agreements, or franchises between a brewer and a wholesaler or a beer importer and a wholesaler shall specifically set forth or contain the following:

(1) that the brewer or beer importer or any officer, agent, or representative of any brewer or beer importer and the wholesaler involved mutually shall determine the size or extent of the area in which the wholesaler may sell or distribute the products of the brewer or beer importer to the retail licensees. Said territory will be the territory agreed upon between the wholesaler and brewer or the wholesaler and beer importer and may not be changed without

CONTROL OF LIQUOR, BEER, AND WINE

16-3-223

the mutual consent of both the wholesaler and brewer or the wholesaler and beer importer.

(2) the agreed-upon brands of the brewer or beer importer to be sold by the wholesaler;

(3) that the brewer or beer importer recognizes that the wholesaler is free to manage his business in the manner the wholesaler deems best and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands he wishes to handle, to determine the effort and resources the wholesaler will exert to develop and promote the sale of the brewer's or beer importer's products handled by the wholesaler;

(4) a procedure for the review of alleged wholesaler deficiencies, including the submission in writing to the wholesaler by the brewer or beer importer of said deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct said deficiencies, and that a reasonable period of time shall be given the wholesaler for rectification of said deficiencies prior to any notice of intent to terminate;

(5) a termination clause providing that the brewer or beer importer shall deliver, in writing, to the wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise.

History: En. 4-317.3 by Sec. 2, Ch. 322, L. 1974; Sec. 4-317.3, R.C.M. 1947; redes. 4-3-208 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-208; amd. Sec. 9, Ch. 19, L. 1985.

16-3-223. Transfer of wholesaler's interest in business. A wholesaler shall have the right to sell or transfer his business or an interest in his business to any person or to one or more members of his family or heirs or legatees, whether the wholesaler operates as an individual, a partnership, or corporation. Provided, however, the consent of the brewer or beer importer in writing is required for such transferee to continue as a wholesaler of said brewer or beer importer, which consent shall consider the personal, financial and managerial responsibilities and capabilities of such transferee and which consent shall not unreasonably be withheld.

History: En. 4-317.4 by Sec. 3, Ch. 322, L. 1974; Sec. 4-317.4, R.C.M. 1947; redes. 4-3-209 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-209; amd. Sec. 10, Ch. 19, L. 1985.

16-3-224. Contractual or franchise relationship — existence by actions. The doing or accomplishing of any of the following acts constitute prima facie evidence of a contractual or franchise relationship between a licensed wholesaler and a brewer or beer importer within the contemplation of 16-3-221 through 16-3-226:

(1) the shipment, preparation for shipment, or acceptance of any order by any brewer or beer importer or its agent for any beer to a licensed wholesaler within this state;

(2) the payment by any licensed wholesaler within this state or the acceptance of payment by any brewer or beer importer or its agent for the shipment of an order of beer intended for sale within this state.

History: En. 4-317.5 by Sec. 4, Ch. 322, L. 1974; Sec. 4-317.5, R.C.M. 1947; redes. 4-3-210 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-210; amd. Sec. 11, Ch. 19, L. 1985.

16-3-225. Injunction to prevent franchise cancellation. Any court of competent jurisdiction may enjoin the cancellation or termination of a franchise or agreement between a wholesaler and a brewer or between a



SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 10, 1997

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill 604 (third reading copy -- blue), respectfully report that House Bill 604 be concurred in.

Signed:

John Hertel
Senator John R. Hertel, Chair

Joe
Amd. Coord.
Sec. of Senate

Sen. Dal Hagg
Senator Carrying Bill

761105SC.SRF

DATE 4-10-97

SENATE COMMITTEE ON Sen Bus & Ind.

BILLS BEING HEARD TODAY: H-B-604

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Bob Stephens	Mt. Garcia Grangers	604	✓	
JIM MACDONALD	SANDY MAC'S DIST.	604	✓	
MARK SCHNECKLOTH	SANDY MAC'S DIST.	604	✓	
Bruce Clark	FunBeverage, Inc	604	X	
Charmaine Murphy	Personal	604	X	
TODD DANIELS	KEESTER	604	✓	
Todd Murphy	Personal	604	✓	
Rep. John Cabral	HD 37	604	—	
Kelly Costley	Anheuser-Busch Co.	604	X	
Tom Hopgood	MBWWA	604	✓	
DAVE BROWN	Mt. Independence Machine Operators Assn.	604	AS ✓ marked in House	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY